

Inter Partes Review: A New Paradigm in Patent Litigation

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I. Introduction

Patent law is and has always been a delicate balance between promoting the sciences and arts and providing a short-term monopoly on the use of inventions.¹ The United States Patent and Trademark Office (USPTO) was established in part to facilitate the granting and cataloging of patents. With the enactment of the America Invents Act (AIA) in 2011, Congress ushered in the largest change to the United States' patent policy in a generation. As a part of this new administrative regime, the Patent Trial and Appeals Board (PTAB) succeeded the previous Board of Patent Appeals and Interferences (BPAI).

As a part and parcel to the new board, Congress scrapped the previous *Inter Partes* Reexamination (IPX) proceeding and replaced it with a new *Inter Partes* Review (IPR) proceeding. The new proceeding aspired to create an alternative legal forum where the public could challenge the monopoly conferred on patent owners without resorting to the federal court system. As a result, the new procedure is not only much faster than other options, but also utilizes an experienced board of Administrative Patent Judges (APJs) to resolve the most technical disputes relating to the sciences and arts. Armed with such a board, the hope is that society is served with a better balance between the rights of the inventor and the rights of the public.

However, as the laws and procedures change, patent owners and patent licensees must adapt to the new opportunities to advance their interests. Against this backdrop, a thorough picture of both the IPR proceeding and its interaction with district court litigation is now required to obtain optimal results.

In this paper, I describe the changes to *inter partes* challenges under the AIA. This foundation in Part II includes the key distinctions between the IPR and IPX proceedings. Congress did not simply rewrap the same package and place a new name on it. Instead, the IPR proceeding reflects a balance between the advantages of the old proceeding and the establishment of the PTAB. The result is a more advanced tribunal permitting nearly any party to challenge any patent where results are available as quickly as possible.

¹ See U.S. CONST. art. I, § 8, cl. 8 (“The Congress shall have power to . . . promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”).

In Part III, the implications of the changes become apparent when analyzing the initial IPR statistics. While the previous IPX proceeding took years to develop into a mature forum, the IPR proceeding has rapidly grown into a necessary option for patent owners and challengers alike.

The PTAB is the premier tribunal for patent issues. These statistics suggest that district courts are more likely than before to grant requests to stay litigation pending a USPTO proceeding. In Part IV, I discuss the new alternative to district court litigation and the challenges that parties face. As a result of the changes, parties must consider how the proceeding interacts with district court litigation to avoid unnecessary expenses and wasted resources. Moreover, a new type of forum shopping has emerged where the power of district judges to manage their dockets results in varied views.

In Part V, I discuss the ability to use the new proceedings to encourage settlement. While settlement can be beneficial to parties, IPRs also have many risks, which are explored in Part VI. Finally, in Part VII, I explore the future of IPRs and a few of the additional changes that have been proposed.

II. Changes to *Inter Partes* Challenges Under the AIA

In 2011, Congress passed the America Invents Act.² While the law is primarily known for shifting the United States' policy on patents from a first-to-invent system to a first-to-file system, the law also transformed the existing IPX into an IPR.³ Starting on September 16, 2012, IPXs were phased out and IPRs were phased in.⁴ Congress created a new proceeding to provide an effective avenue for direct challenges to the validity of patents that could serve as an alternative to traditional patent litigation.⁵ Before considering the impact of the new procedure, it is important to understand how the new procedure differs from the previous.

A. Availability of Proceeding

Any party may file a request for an IPR within one year of service in a lawsuit involving the same patent.⁶ Moreover, any party who has filed a civil action in district court challenging the validity of a patent is estopped from filing an IPR on the same patent.⁷ This restriction, however, does not apply to counterclaims challenging the validity of a patent.⁸

² Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (codified in scattered sections of 35 U.S.C.).

³ *Id.* § 6(d), §§ 321–329, 125 Stat. at 305–06.

⁴ *Id.* § 8(b).

⁵ See Melissa F. Wasserman, *The Changing Guard of Patent Law: Chevron Deference for the PTO*, 54 WM. & MARY L. REV. 1959, 1983 (2013) (noting the repeated references in the AIA's legislative history to trial-like proceedings).

⁶ 37 C.F.R. § 42.101 (2014).

⁷ *Id.*

⁸ 35 U.S.C. § 315(a)(3) (2013).

In addition to offering anyone other than the patent owner the ability to file a petition, the IPR proceeding also provides for joinder.⁹ Joinder helps the PTAB manage its caseload and docket. If the PTAB institutes parallel reviews of the same patent, it can join the proceedings and issue joint opinions. Thus, IPRs are available to more parties because of the PTAB's ability to handle the expected number of petitions.

The availability of the IPR proceeding differs significantly from the IPX proceeding. When Congress introduced the IPX proceeding in 1999,¹⁰ an effort to reduce the number of requests before the USPTO limited the enforceability of the proceeding to patents filed after November 29, 1999. Effectively, the majority of granted patents were exempt from IPX proceedings. In contrast, Congress expanded the scope of IPRs by extending the proceeding to all issued patents.¹¹ An IPR is available either nine months after the grant of the patent or after the termination of the post grant review (PGR) if a PGR is initiated.¹²

B. Duration and Procedure

One major complaint of the previous IPX proceeding was the unbounded duration. The average duration of IPXs ranged from 30.38 to 42.05 months (2.53 to 3.50 years) in fiscal year 2013.¹³ In response, Congress limited IPRs to a one-year period between the initiation of a review and the final determination.¹⁴ This one-year period is distinct from the three-month period a patentee has to file an initial response to the challenger and the three-month period for the PTAB to evaluate the request and initiate a proceeding. Nevertheless, IPRs should typically complete within eighteen months of filing with two notable exceptions. First, the PTAB can extend the review period from twelve to eighteen months with a showing of good cause.¹⁵ Second, if a proceeding is joined with another, the PTAB "may adjust the time periods."¹⁶

After a petitioner files an IPR, the USPTO permits the owner of the patent at issue to file a preliminary response within three months.¹⁷ The response is optional for the patent owner, but is "limited to setting forth the reasons why no inter partes review should be instituted."¹⁸ This limitation excludes new testimonial evidence, such as an affidavit.¹⁹ Although claim amendments are not permitted during the

⁹ 35 U.S.C. § 315(c).

¹⁰ Optional Inter Partes Reexamination Procedure Act of 1999, Pub. L. No. 106-113, §§ 4601-08, 113 Stat. 1501, 1501A-567 to -572 (1999) (codified as amended at 35 U.S.C. §§ 311-18 (2006)).

¹¹ 35 U.S.C. § 311 (2013).

¹² 37 C.F.R. § 42.102(a) (2014).

¹³ U.S. PATENT AND TRADEMARK OFFICE, REEXAMINATIONS – FY 2013 (2013), *available at* http://www.uspto.gov/patents/stats/Reexamination_operational_statistic_F_14_Q3.pdf.

¹⁴ 35 U.S.C. § 316(a)(11) (2013).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 37 C.F.R. § 42.107(b) (2014).

¹⁸ *Id.* § 42.107(a).

¹⁹ *See id.* § 42.107(c) (excluding "new testimony evidence . . . except as authorized by the Board").

preliminary response,²⁰ a patent owner may disclaim a patent claim to avoid the institution of an IPR on that particular claim.²¹

Once the preliminary response phase of the IPR completes, either by the filing of a response by the patent owner or an expiration of the three-month period, the PTAB has three months to determine if an IPR should be instituted.²² Interestingly, the PTAB's decision is final and not appealable in court.²³ In order for an IPR to be instituted, at least one challenged claim must meet a threshold inquiry.²⁴ This threshold is defined as a "reasonable likelihood [of success] that the petitioner would prevail."²⁵

The statutory one-year limit for a final written decision begins as soon as the PTAB makes a decision on the petition. During this term, the parties alternate in discovery, motions, and arguments.²⁶ First, the patent owner receives three months for discovery.²⁷ At the end of this period, the patent owner must file a response to the petition and if desired, file a motion to amend its claims.²⁸ Then, the petitioner receives three months for discovery at the end of which a reply brief to the patent owner's response must be filed, along with an opposition to claim amendments if applicable.²⁹ After the first round of discovery, the response periods accelerate with the patent owner receiving only one month for further discovery and briefing.³⁰ At the parties' request, the PTAB will schedule an oral hearing where the parties may present their arguments and the PTAB may hear live testimony.³¹ Finally, the PTAB will issue a final decision after oral arguments are complete but before the statutory period ends.³²

C. Patent Office Fees

Despite the shortened duration for IPRs, the USPTO requires significantly higher fees for IPRs due to the increased demands on the PTAB. Through a final decision, the IPX fee was \$8,800.³³ In contrast, the IPR fee is \$23,000.³⁴ Under both schemes, if the PTAB declines to institute a review, the USPTO will issue a

²⁰ *Id.* § 42.107(d).

²¹ *Id.* § 42.107(e).

²² 35 U.S.C. § 314(b) (2013).

²³ *See* Dominion Dealer Solutions, LLC v. Lee, No. 3:13CV00699, 2014 WL 1572061, at *7 (E.D. Va. Apr. 18, 2014) (dismissing petitioner's challenge in federal court).

²⁴ 35 U.S.C. § 314(a).

²⁵ *Id.*

²⁶ *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756-01, 48,757 (Aug. 14, 2012) (showing the representative timeline).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 48,757-58.

³⁰ *Id.*

³¹ *Id.* at 48,768.

³² Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768.

³³ 37 C.F.R. § 1.20(c)(2) (2008).

³⁴ *Id.* § 42.15(a)(1)-(2) (2014).

refund for \$7,970 and \$14,000 respectively.³⁵ A key distinction between the two proceedings is the fee for excess claims. IPRs require \$200 for each claim in excess of twenty during the request phase of the proceeding and \$400 for each claim in excess of fifteen during the review phase.³⁶ IPXs did not have separate fees for filing and review.³⁷ Moreover, the USPTO previously charged only \$210 for each independent claim in excess of three and \$50 for each claim in excess of twenty.³⁸ Thus, the new proceeding is significantly more expensive, particularly for proceedings involving an excess number of claims.

D. Basis for Instituting Review

Both IPR and IPX proceedings provide for a similar threshold for granting a petition. If at least one claim in the petition has a reasonable likelihood of success for the petitioner, the PTAB can institute review.³⁹ The original IPX proceeding had a lower standard equivalent to *ex parte* reexaminations where “a substantial new question of patentability” is required.⁴⁰ Parts III and IV will consider the implications of the elevated standard for instituting review on the USPTO and on a petitioner’s overall strategy in attacking the validity of a patent.

E. Composition of Tribunal

In addition to elevating the standard for instituting review, Congress notably changed the composition of post-grant proceeding tribunals with the enactment of the AIA. IPXs were conducted, just as *ex parte* reexaminations are, by examiners.⁴¹ At the end of a reexamination, parties could appeal to the BPAI.⁴²

With the AIA, however, Congress converted the BPAI’s examinational proceeding into an adjudicative one.⁴³ Thus, IPRs are designated to be handled by the PTAB,⁴⁴ effectively recognizing that examiners are not equipped to conduct the review. The USPTO has also delegated to the PTAB the power to determine if an IPR should be instituted.⁴⁵ For a given petition, the panel consists of at least three APJs within the PTAB.⁴⁶ The result is a proceeding before the PTAB that is much more “trial-like” than the IPXs before the BPAI.⁴⁷

³⁵ *Id.* §§ 1.26(c)(2), 42.15(a)(2) (2014) (specifying refunds for IPXs and IPRs respectively).

³⁶ *Id.* § 42.15(a)(3)–(4).

³⁷ *Id.* § 1.20 (2008).

³⁸ *Id.* § 1.20(c)(3)–(4).

³⁹ 35 U.S.C. § 314(a) (2013); 35 U.S.C. § 312(a)(3) (2011).

⁴⁰ *Flo Healthcare Solutions, LLC v. Kappos*, 697 F.3d 1367, 1370 (Fed. Cir. 2012).

⁴¹ 35 U.S.C. § 314(a) (2006) (referring to 35 U.S.C. §§ 132–33 (2006)).

⁴² *Id.* § 315 (2006) (referring to 35 U.S.C. §§ 134, 141–44 (2006)).

⁴³ H.R. REP. NO. 112-98, pt. 1, at 46–47 (2011), *reprinted in* 2011 U.S.C.C.A.N. 67, 77; *see Abbott Labs. v. Cordis Corp.*, 710 F.3d 1318, 1326 (Fed. Cir. 2013) (noting the differences between the new and old proceedings).

⁴⁴ 35 U.S.C. § 316(c) (2013).

⁴⁵ 37 C.F.R. § 42.4(a) (2014) (designating the PTAB “on behalf of the Director”).

⁴⁶ 35 U.S.C. § 6(c) (2013); 37 C.F.R. § 42.2 (2014).

⁴⁷ *See Wasserman*, *supra* note 5.

F. Standard of Evidentiary Review and Discovery

In contrast to the shift in the composition of the tribunals, both IPRs and IPXs have the same standard of evidentiary review.⁴⁸ A key distinction between *inter partes* challenges in the USPTO and district court litigation lies in the evidentiary standards for patent invalidity. In district courts, the party challenging the legitimacy of a patent claim must prove invalidity by clear and convincing evidence.⁴⁹ In the USPTO, however, the petitioner must prove invalidity by a preponderance of the evidence.⁵⁰ With the relaxed standard of evidentiary review before the USPTO, a fragmented adjudication may result where a patent is held invalid before the USPTO, but held valid before a district court judge.⁵¹

Despite having identical evidentiary standards, a key distinction between the new and old proceeding lies in discovery. IPXs significantly limited discovery because they are not “contested” proceedings under federal law.⁵² In contrast, IPRs are contested proceedings under federal law, and thus, the USPTO can grant subpoenas during the discovery phase of the proceeding.⁵³ Thus, parties may leverage the USPTO’s power to subpoena witnesses during the discovery phases of the IPR proceeding.⁵⁴

G. Estoppel and Settlement

After the completion of an *inter partes* proceeding, both the IPX and the IPR estop parties from asserting any ground that was “raised or reasonably could have raised” before the tribunal.⁵⁵ The new proceeding, however, adds three key distinctions.

First, estoppel now attaches earlier. Instead of attaching at the end of all appeals, estoppel from IPR attaches from the date of the PTAB’s final written decision.⁵⁶ Therefore, if a party appeals the result of an IPR to the Federal Circuit, estoppel attaches prior to the appeal.

Second, estoppel now applies not only in district court, but before the International Trade Commission (ITC) and the USPTO too.⁵⁷ Suppose that an alleged infringer unsuccessfully contests a patent claim in an IPR but appeals the decision to

⁴⁸ Microsoft Corp. v. i4i Ltd. P’ship, 131 S. Ct. 2238, 2252 (2011) (“Through it all, the evidentiary standard adopted in [35 U.S.C.] § 282 has gone untouched.”).

⁴⁹ *Id.* at 2242.

⁵⁰ 35 U.S.C. § 316(e) (2013); 37 C.F.R. § 42.1(d) (2014); U.S. Patent & Trademark Office, Manual of Patent Examining Procedure § 706 (9th ed. Mar. 2014).

⁵¹ See David L. McCombs et al., *Federal Circuit Appeals from the PTAB: A New Game or Just the Same Old Practice?*, 95 J. PAT. & TRADEMARK OFF. SOC’Y 240, 246 (2013) (discussing different standards of review for invalidity determinations and the implications for the Federal Circuit).

⁵² See *Abbott Labs. v. Cordis Corp.*, 710 F.3d 1318, 1320, 1328 (Fed. Cir. 2013) (holding that 35 U.S.C. § 24 (2011) does not permit the USPTO to grant subpoenas in IPX proceedings).

⁵³ *Id.* at 1320.

⁵⁴ See *supra* Part II.B (reviewing procedure for conducting IPRs).

⁵⁵ 35 U.S.C. § 315(e) (2013) (IPR); 35 U.S.C. § 315(c) (2006) (IPX).

⁵⁶ *Id.* § 315(e).

⁵⁷ *Id.*

the Federal Circuit.⁵⁸ If the alleged infringer is subsequently subject to an ITC proceeding on the same patent claim, it is estopped from making an argument on any ground that was raised or reasonably could have been raised during the post-grant proceeding, despite the possibility that the Federal Circuit could reverse the PTAB's decision.

Finally, IPRs are independent of any district court litigation. A party who challenges the validity of a patent in both district court and the USPTO may encounter a conundrum. Under the older proceeding, if the district court found the patent to be valid first, the BPAI would vacate the related IPX.⁵⁹ Thus, the challenger would receive only one bite at the apple. Under the new proceeding, however, the PTAB continues its related proceeding regardless of the result in district court. Conceivably, this suggests that IPR petitioners may receive not one, but rather two chances to invalidate a patent claim.

Notwithstanding the changes discussed previously, one of the most significant differences between the proceedings lies in settlement. Under IPXs, Congress and the USPTO did not explicitly define the implications of settlement. Instead, parties had two unlikely options. First, parties could vacate the proceeding under the parallel district court estoppel provision with a consent judgment from a district court stating that the alleged infringer had not met its burden of proof for invalidity.⁶⁰ Second, the requestor of the proceeding could file a statement of non-participation.⁶¹ The complexities of these options effectively discouraged settlement when the dispute involved an IPX.

In contrast, Congress provided IPRs with explicit provisions for settlement.⁶² The PTAB will terminate any IPR if both the petitioner and the patent owner make a joint request.⁶³ Under this scenario, no estoppel attaches to the petitioner and the PTAB will refrain from adding the settlement agreement to the official file history

⁵⁸ The law is ambiguous regarding patent claims or grounds of unpatentability challenged by the petitioner but denied review by the PTAB. For an example of how the PTAB has interpreted the estoppel provision, see *Amkor Tech., Inc. v. Tessera, Inc.*, No. IPR2013-00242, 2014 WL 1329360 (P.T.A.B. Jan. 10, 2014) (denying request to reconsider earlier decision to deny review of cumulative grounds of unpatentability).

⁵⁹ 35 U.S.C. § 317(b) (2006); William Hannah, *Major Change, New Chapter: How Inter Partes Review and Post Grant Review Proceedings Created by the America Invents Act Will Shape Litigation Strategies*, 17 INTELL. PROP. L. BULL. 27, 42 (2012) (“Under Inter Partes Reexamination, settlement terminations rarely took place.”).

⁶⁰ *See id.*

⁶¹ See Scott A. McKeown, *Settlement Agreements & Patent Reexamination*, PATENTS POST-GRANT (Jan. 4, 2012), <http://www.patentspostgrant.com/lang/en/2012/01/settlement-agreements-patent-reexamination> (describing the procedure for using a statement of non-participation “as a basis for a petition under 37 CFR 1.183 to waive Rule 955 such that an interview may be conducted in the IPX proceeding”); *Settlement*, THE PTO LITIGATION CENTER, <http://ptoligationcenter.com/2009/09/settlement> (last visited Apr. 23, 2014) (discussing the difficulties with terminating an IPX and noting that “[w]hen the third party steps out of the reexamination, the *inter partes* reexamination effectively turns *ex parte* in nature”).

⁶² 35 U.S.C. § 317 (2013).

⁶³ *Id.* § 317(a).

of the patent or patents at issue.⁶⁴ The USPTO provides only one exception: if the PTAB decides the petition on its merits before the parties reach a settlement, it may decline to terminate the IPR proceeding.⁶⁵ Nevertheless, the settlement provision for IPRs should encourage parties to settle more often than before.

III. Statistics of *Inter Partes* Review

The new proceedings have proved exceedingly popular, fueled by the changes from the IPX proceedings. The USPTO originally estimated that only 460 petitions would be filed.⁶⁶ Yet, in fiscal year 2013, 514 IPR petitions were filed with the PTAB.⁶⁷ In contrast, IPXs were not nearly as popular as expected. The USPTO had estimated that 400 petitions would be filed in fiscal year 2000, the first year of availability.⁶⁸ Once accessible, however, no petitioner filed a single request until 2001.⁶⁹ This result was likely caused by the limited availability of the proceeding where only patents filed subsequent to November 29, 1999 were subject to IPXs.⁷⁰ Nevertheless, IPX filings did not eclipse the initial projection of 400 petitions until fiscal year 2012—12 years later.⁷¹ Considering the tepid reception to IPXs, IPRs certainly appear to be more popular.

A. Managing Administrative Resources

Since its institution in 2012, the popularity of IPRs continues to grow. Along with 17 petitions filed in the first few days in fiscal year 2012 and 514 petitions filed in fiscal year 2013, 1,310 petitions were filed in fiscal year 2014.⁷² IPRs have also proven to be more popular than other proceedings under the AIA, including Covered Business Method (CBM) reviews.⁷³

With the number of petitions far exceeding the USPTO's expectations, several concerns regarding the agency's ability to manage its docket have arisen. The

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Changes to Implement Inter Partes Review Proceedings, 77 Fed. Reg. 7041-01, 7055 (proposed Feb. 10, 2012) (to be codified at 37 C.F.R. pt. 42).

⁶⁷ Patent Trial and Appeal Board, *AIA Progress Statistics*, USPTO.GOV (Jan. 1, 2015), http://www.uspto.gov/ip/boards/bpai/stats/aia_statistics_1_1_2015.pdf.

⁶⁸ UNITED STATES PATENT AND TRADEMARK OFFICE, REPORT TO CONGRESS ON *INTER PARTES* REEXAMINATION 5 (2004), available at <http://www.uspto.gov/web/offices/dcom/olia/reports/reexamreport.pdf>.

⁶⁹ *Id.*

⁷⁰ See U.S. Patent & Trademark Office, Manual of Patent Examining Procedure § 2601 (9th ed. Mar. 2014).

⁷¹ See *Inter Partes Reexamination Filing Data*, USPTO.GOV (Sept. 30, 2013), http://www.uspto.gov/patents/stats/inter_parte_historical_stats_roll_up_EOY2013.pdf (reporting 530 IPX filings in fiscal year 2012).

⁷² See Patent Trial and Appeal Board, *supra* note 67.

⁷³ *Id.*

USPTO originally proposed several mechanisms to help control the flow of requests.⁷⁴

First, the USPTO could increase the filing and institution fees for IPRs. Given that existing fees are based upon the estimated number of hours of work for each IPR, the USPTO could justify an increase by showing that the PTAB is unable to manage its workload. For example, if the USPTO is struggling to attract sufficient numbers of qualified talent, the USPTO may increase the estimated hourly cost for APJs. Accordingly, an increase in fees could be implemented in a number of ways including the base fee, excess claim fees, or reducing the number of claims included in the base fee.

Second, the USPTO could limit the number of claims in an instituted IPR to reduce the overall load on the PTAB's docket. Congress has only defined the reasonable likelihood of success standard as a minimum bar for the USPTO to follow.⁷⁵ If the USPTO desires to reduce the number of filings, it could establish an elevated standard to discourage weaker petitions. Such a change may also have implications for parallel district court litigation as discussed further in Part IV.

Third, the USPTO could be more aggressive in consolidating IPRs between parties and patents. Congress granted the agency the flexibility in managing its docket.⁷⁶ In effect, this approach would group together more proceedings to improve the PTAB's efficiency. Furthermore, joinder and consolidation of petitions may grant the PTAB additional time to adjudicate disputes.⁷⁷

Despite the benefits of the three options above, however, the USPTO's approach has been to grow into its new role. Instead of increasing fees, raising standards for instituting review, or increasing the length of its review, the USPTO has focused on expanding the size of the PTAB by increasing the number of APJs by more than 30%.⁷⁸

B. Technology Distribution

Behind the remarkable demand for IPRs are the electrical and computer industries. The USPTO reports that as of September 5, 2014, over 70% of post-grant

⁷⁴ See Changes to Implement Inter Partes Review Proceedings, 77 Fed. Reg. 7041-01, 7055 (proposed Feb. 10, 2012) (to be codified at 37 C.F.R. pt. 42) (calculating burdens on parties and board).

⁷⁵ See 35 U.S.C. § 314(a) (2013) ("The Director may not authorize an inter partes review . . . unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.").

⁷⁶ *Id.* § 315(c)–(d) (2013) (defining procedures for joinder and multiple proceedings).

⁷⁷ See *id.* § 316(a)(11) (2013) (granting the PTAB the power to "adjust the time periods . . . in the case of joinder").

⁷⁸ Linda Horner & Scott Boalick, *Patent Public Advisory Committee Quarterly Meeting: Patent Trial and Appeal Board Update*, USPTO.GOV (Feb. 12, 2014), http://www.uspto.gov/about/advisory/ppac/ppac_meetings.jsp (navigate to "February 12, 2014" then follow hyperlink "PTAB Update & Discussion") (disclosing that the PTAB will hire 57 additional judges in fiscal year 2014 for a total of 236 judges).

proceedings are filed for electrical and computer patents.⁷⁹ These types of patents stand in contrast to mechanical, chemical, biology, biotechnology, and pharmaceutical patents, which cumulatively account for approximately 28% of the filings.⁸⁰

This data, however, is not entirely surprising. Patent litigation in the computer, electronics, software, and telecommunications industries historically has resulted in many of the largest median damage awards.⁸¹ Moreover, non-practicing patent holders in these areas have a significantly lower success rate in litigation.⁸² Software non-practicing entities, in particular, have a meager success rate near 15%.⁸³ In contrast, medical device non-practicing entities have a success rate near 40%.⁸⁴ Furthermore, a significant number of IPRs are filed against non-practicing patent holders.⁸⁵ Nearly 40% of all IPR petitions prior to 2014 have been filed against their patents.⁸⁶ Therefore, parties accused of infringement by a non-practicing entity in litigation before a district court will often use IPRs as a tool in their defense.

C. Preliminary Responses

After a petitioner files an IPR with the USPTO, a patent owner has three months to submit an optional preliminary response.⁸⁷ In fact, approximately 25% of patent owners waive their preliminary response.⁸⁸

One reason for this behavior lies in the USPTO's procedures. A patent owner has three options when a petitioner files an IPR against one of its patents: file a preliminary response, do not file a preliminary response, or file an election waiver.⁸⁹ If the patent owner files an election waiver, the PTAB expedites the IPR by treating the waiver as a response to the petition without arguing the merits.⁹⁰ A patent owner looking to accelerate the decision to institute review can file a waiver soon after receiving service from the petitioner.

Another more plausible reason for this behavior lies in estoppel. The USPTO expressly states that a patent owner "is precluded from taking action inconsistent

⁷⁹ Patent Trial and Appeal Board, *AIA Progress Statistics*, USPTO.GOV (Sept. 25, 2014), http://www.uspto.gov/ip/boards/bpai/stats/aia_statistics_09_25_2014.pdf (reporting 1,467 petitions for electrical and computer technologies).

⁸⁰ *Id.*

⁸¹ PRICEWATERHOUSECOOPERS, 2013 PATENT LITIGATION STUDY 15 (2013).

⁸² *Id.* at 16, 18.

⁸³ *Id.* at 18.

⁸⁴ *Id.*

⁸⁵ RPX CORPORATION, 2013 NPE LITIGATION REPORT 40 (2013), available at <http://www.rpxcorp.com/wp-content/uploads/2014/01/RPX-2013-NPE-Litigation-Report.pdf>.

⁸⁶ *Id.* at 5.

⁸⁷ 35 U.S.C. § 313 (2013); 37 C.F.R. § 42.107(b) (2014).

⁸⁸ See Patent and Trial Appeal Board, *supra* note 79 (reporting 63 and 202 waived preliminary responses in fiscal year 2013 and 2014 respectively, and 237 and 820 filed preliminary responses in fiscal year 2013 and 2014 respectively).

⁸⁹ 37 C.F.R. § 42.107.

⁹⁰ See *id.* § 42.107(b).

with [an] adverse judgment” in a future proceeding.⁹¹ Furthermore, any argument that the patent owner makes in a preliminary response has the potential to create prosecution history estoppel, narrowing the scope of a claim during construction by a district court.⁹² These risks chill the patent owner’s desire to file a preliminary response. Patent owners are more likely to avoid filing a preliminary response or to prefer filing an election waiver. Thus, these reasons may explain the trend toward election waivers.

D. PTAB Trials

In 2013 and 2014, the PTAB instituted over 700 trials for IPRs.⁹³ More importantly, in 2013 it granted over 80% of the petitions on the grounds that a challenge to at least one claim has a reasonable likelihood of success on the merits.⁹⁴ There is, however, a minor trend toward fewer petitions being instituted with around a 9.5% decline between fiscal year 2013 and fiscal year 2014.⁹⁵ Nevertheless, the PTAB continues to institute reviews at a high rate that benefits petitioners.⁹⁶

Also, the PTAB has disposed of 573 IPRs.⁹⁷ Nearly 58% of these disposals are due to settlements between the parties.⁹⁸ These settlements rarely estop parties in subsequent USPTO proceedings or in litigation.⁹⁹ Interestingly, fiscal year 2013 ended with a settlement rate at 95%, while fiscal year 2014 ended at a mere 55%.¹⁰⁰ This trend suggests that settlement rates may decline in the future as the PTAB issues more final written decisions and the expectancy model of IPRs is established. If this holds true, the PTAB will likely issue more final written decisions than the sixty-four issued thus far in fiscal year 2015.¹⁰¹

IV. Staying District Court Litigation

Driven by the popularity of IPRs, district courts are increasingly faced with requests to stay litigation pending the final decision from the PTAB. If successful,

⁹¹ *Id.* § 42.73(d)(3) (2014) (specifying patent owner estoppel before the USPTO). The USPTO has not addressed the specific issue of whether or not an adverse judgment would result from an unsuccessful preliminary response to an IPR petition.

⁹² *See* *InTouch Techs., Inc. v. VGO Commc’ns, Inc.*, 751 F.3d 1327, 1341 (Fed. Cir. 2014) (narrowing the trial court’s construction of a “call back mechanism” due to prosecution history estoppel created during reexamination).

⁹³ Patent Trial and Appeal Board, *AIA Progress Statistics*, USPTO.GOV (Jan. 1, 2015), http://www.uspto.gov/ip/boards/bpai/stats/aia_statistics_1_1_2015.pdf.

⁹⁴ *Id.* The PTAB does not report the percentage of requested claims that are granted review.

⁹⁵ *Id.* (reporting 167 of 203 petitions instituted in 2013, and 557 of 765 petitions instituted in 2014).

⁹⁶ For a detailed analysis of how IPRs benefit petitioners, see Michelle Carniaux & Julia Tanase, *IPR and CBM Statistics*, IPR BLOG (Apr. 7, 2014), <http://interpartesreviewblog.com/ipr-cbm-statistics/>.

⁹⁷ *See* Patent Trial and Appeal Board, *supra* note 94.

⁹⁸ *Id.* (reporting 329 of 573 disposals have resulted in settlements).

⁹⁹ *See supra* Part II.G (reviewing settlement provisions).

¹⁰⁰ *See* Patent Trial and Appeal Board, *supra* note 94 (reporting 38 of 41 disposals resulting in settlements in 2013 and 210 of 380 disposals resulting in settlements in 2014).

¹⁰¹ *Id.*

parties can avoid litigation costs and can benefit from the speed of the PTAB proceeding to reach a rapid resolution. Not all district courts, however, deal with requests to stay in the same manner and most consider many factors to manage their dockets effectively. Thus, movants should be prepared to persuade judges who are either reluctant to defer to the USPTO or who misunderstand the differences between the BPAI and the PTAB.

A. Factors Balanced by District Courts

The legal standard for motions to stay varies slightly between jurisdictions. The most cited formulation includes three factors: “(1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.”¹⁰² In addition to these factors, the Federal Circuit has cautioned district courts to avoid granting both a preliminary injunction and a motion to stay in the same case.¹⁰³ A party seeking to stay district court litigation should ensure that these three factors weigh in favor of the court granting the motion.

1. Undue Prejudice

To evaluate the first factor—undue prejudice to the non-moving party—courts frame their analysis around four issues or sub-factors: delay in filing an IPR, delay in filing a motion to stay, the status of an IPR, and the relationship between the parties.¹⁰⁴

a. Delay in Filing IPR

A court may deny a motion to stay when the moving party unreasonably delays in filing an IPR, which suggests a dilatory intent.¹⁰⁵ While there is no bright line rule, courts determine the reasonableness of the delay by looking either at when the moving party could have filed an IPR or when the moving party should have filed an IPR in relation to milestones in the litigation.

¹⁰² Xerox Corp. v. 3Com Corp., 69 F. Supp. 2d 404, 406 (W.D.N.Y. 1999), *quoted in* Sovereign Software LLC v. Amazon.Com, Inc., 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005); *see* Peach State Labs, Inc. v. Emtl. Mfg. Solutions, LLC, No. 6:09-CV-395-ORL-28, 2012 WL 503839, at *3 (M.D. Fla.), *report and recommendation adopted*, No. 6:09-CV-395-ORL-28, 2012 WL 503837 (M.D. Fla. Feb. 15, 2012) (stating the third factor as “whether a stay will reduce the burden of litigation on the parties and on the court”).

¹⁰³ *See* Procter & Gamble Co. v. Kraft Foods Global, Inc., 549 F.3d 842, 849 (Fed. Cir. 2008) (noting that both preliminary injunctions and motions to stay depend on whether or not there is a “substantial issue of patent validity”).

¹⁰⁴ *See* Ever Win Int’l Corp. v. RadioShack Corp., 902 F. Supp. 2d 503, 508 (D. Del. 2012) (defining the four sub-factors as “(1) the timing of the request for reexamination; (2) the timing of the request for stay; (3) the status of reexamination proceedings; and (4) the relationship of the parties”).

¹⁰⁵ *See* Belden Techs. Inc. v. Superior Essex Commc’ns LP, No. 08-63-SLR, 2010 WL 3522327, at *2 (D. Del. Sept. 2, 2010) (“A request for reexamination made well after the onset of litigation followed by a subsequent request to stay may lead to an inference that the moving party is seeking an inappropriate tactical advantage.”).

For example, if a movant files an ex parte reexamination first and then files an IPR, a court may be reluctant to stay the case.¹⁰⁶ In *Wintek*, the movant could have filed an IPR but instead chose to file an ex parte reexamination.¹⁰⁷ After filing the reexamination with the USPTO, the movant requested a stay from the district court.¹⁰⁸ The patent owner, who disfavored the slow speed of the proceeding and the limited estoppel provisions, successfully opposed the stay.¹⁰⁹ In response, the movant filed two IPRs and brought a renewed motion to stay.¹¹⁰ Because the movant delayed in filing the IPR by nearly five months, the court found that the movant had not been diligent and denied the motion to stay.¹¹¹ Thus, movants should be mindful of filing an IPR from the outset of litigation because even a five-month delay can needlessly increase litigation costs with parallel proceedings.

b. Delay in Requesting Stay

A court may also deny a delayed request to stay. In an egregious case, a movant waited until only seven business hours remained before jury selection to file a motion to stay.¹¹² Unsurprisingly, the court noted that such a delay “weighs heavily against a stay” and denied the motion.¹¹³ In contrast, a court may find no dilatory motive when the movant waits less than three months after receiving the complaint to file an IPR and a motion to stay.¹¹⁴ Thus, movants must show diligence in filing an IPR and then requesting a stay of litigation.

In addition to a delay in filing an IPR, a court may also evaluate the status of an IPR as an alternative method of determining if the movant delayed in requesting a stay. The USPTO must decide whether to institute review and complete the review within eighteen months.¹¹⁵ If a petitioner delays between filing an IPR and a motion to stay, and the PTAB has decided to institute review, a court may deny the motion because the proceeding before the PTAB would complete more quickly than any milestones in the litigation.¹¹⁶ Because IPRs reach a final decision much faster

¹⁰⁶ See *TPK Touch Solutions, Inc v. Wintek Electro-Optics Corp.*, No. 3:13-CV-02218-JST, 2013 WL 6021324, at *5 (N.D. Cal. Nov. 13, 2013) (denying the motion to stay where movant “had enough information to request IPR immediately after [the] action was filed, but did not”).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at *1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at *5–6.

¹¹² *Personalized Media Commc’ns, LLC v. Zynga, Inc.*, No. 2:12-CV-00068-JRG-RSP, slip op. at 3 (E.D. Tex. Nov. 8, 2013).

¹¹³ *Id.*

¹¹⁴ See *Neste Oil OYJ v. Dynamic Fuels, LLC*, No. 1:12-CV-01744-GMS, 2013 WL 3353984, at *2 (D. Del. July 2, 2013) (“Given the prompt filing of both the petition for *inter partes* review and the motion to stay, the court cannot discern an improper dilatory motive.”).

¹¹⁵ See *supra* Part II.B (charting the IPR timeline).

¹¹⁶ *Nexans Inc. v. Belden Inc.*, No. 12-1491-SLR-SRF, 2014 WL 651913, at *3 (D. Del.), *report and recommendation adopted*, No. CV 12-1491-SLR/SRF, 2014 WL 1232218 (D. Del. Mar. 12, 2014).

than IPXs,¹¹⁷ movants must file a request for a stay earlier than under the pre-AIA legal regime.

For example, the movant in *Nexans* filed four IPRs in November and December of 2012.¹¹⁸ The PTAB instituted review on all petitions in June 2013,¹¹⁹ but the movant delayed in filing a motion to stay. Instead of immediately filing a motion, the movant waited until the court denied its motion to dismiss—mere months before the conclusion of the IPRs.¹²⁰ Despite the movant filing the IPRs prior to the filing of the patent infringement suit, Judge Fallon reasoned that a stay was disfavored because the PTAB would issue a decision in May 2014, which was well before the close of fact discovery in February 2015.¹²¹ Thus, the movant was unable to use a stay to reduce litigation costs while pursuing multiple IPRs.

c. Status of IPR

Courts take opposing views of the IPR procedure, which is divided into two primary stages: (1) the IPR petition is submitted and (2) the IPR petition is granted. In many cases, if a party requests a stay before the PTAB has granted the petition, the court will decline to stay the proceedings without prejudice.¹²² In some cases, however, a court may find it convenient to stay the case while the PTAB determines whether or not to grant a petition.¹²³ Given that most unsuccessful motions are denied without prejudice, a movant should file a motion prior to the PTAB's initial decision. If the motion is unsuccessful, the movant should renew the motion after the PTAB institutes review.

d. Relationship of Parties

Notwithstanding the previous considerations, the relationship between the moving and non-moving parties is often the dispositive factor in denying a motion to stay litigation. If the two parties are direct competitors where any delay could damage a competitor's market position, a court is unlikely to grant a stay.¹²⁴ In *Team Technologies*, the parties were competitors for tooth-whitening products, and the court determined that placing the litigation on hold would increase the harm to the patent owner, particularly because the patents were due to expire soon.¹²⁵ Inter-

¹¹⁷ See *supra* Part II.B (comparing the IPX and IPR durations).

¹¹⁸ *Nexans*, 2014 WL 651913 at *1–2.

¹¹⁹ *Id.* at *2.

¹²⁰ *Id.* at *3.

¹²¹ *Id.*

¹²² See, e.g., *Nat'l Oilwell Varco, L.P. v. Pason Sys. USA Corp.*, No. A-12-CA-1113-SS, 2013 WL 6097578, at *1 (W.D. Tex. June 20, 2013) (declining to stay IPR without prejudice).

¹²³ See, e.g., *Grobler v. Sony Computer Entm't Am. LLC*, No. 12-CV-01526-JST, 2013 WL 8445750, at *1 (N.D. Cal. June 6, 2013) (noting that the PTAB's decision will provide intrinsic evidence useful for claim construction).

¹²⁴ *Procter & Gamble Co. v. Team Techs., Inc.*, No. 1:12-CV-552, 2013 WL 4830950, *2 (S.D. Ohio Sept. 10, 2013).

¹²⁵ *Id.*

estingly, the court noted that the plaintiff did not need to seek a preliminary injunction to receive consideration of competitive harm.¹²⁶

But mere competition may not be enough. If other competitors exist in the same market and the plaintiff fails to bring a motion for a preliminary injunction, a court may slightly favor a stay.¹²⁷ A court may also consider the remaining duration of the patent term to estimate the magnitude of harm. Thus, a direct competitor often cannot stay district court litigation while challenging a patent in an IPR unless other competitors exist in the market or the patent term is far from expiration. This consideration, along with the timely filing of an IPR and a motion to stay, will benefit a movant seeking to avoid undue prejudice to the non-moving party.

2. Issue Simplification

To evaluate the second factor in a motion to stay—if an IPR will simplify the issues in the case—courts look at the scope of the IPR. A few courts will also evaluate the statistical success rates for IPRs to determine the likelihood that a given issue will be simplified.¹²⁸

While it seems that courts decide motions to stay in a binary fashion, one size does not fit all. Courts exercise broad discretion in managing cases on their docket. Accordingly, motions to stay are often granted or denied in part. In some cases, a court will issue a partial stay for a few of the patents in a case.¹²⁹ Courts will even restrict stays on certain causes of action while continuing others.¹³⁰ Moreover, courts will look at related actions by the same patent holder against multiple defendants where an IPR will not simplify issues for all of the parties. Judge Stark, for example, denied a motion to stay when a case was related to thirteen other actions before the same court.¹³¹ Judge Gilstrap also denied a motion to stay when the patent was involved in five active cases.¹³²

Surprisingly, on occasion, courts will stay the entire litigation despite the movant failing to challenge all the asserted patents in IPRs.¹³³ This holistic approach

¹²⁶ *Id.* (citing *Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 943 F. Supp. 2d 1028, 1031 (C.D. Cal. 2013)).

¹²⁷ *TruePosition, Inc. v. Polaris Wireless, Inc.*, No. 1:12-CV—646-RGA/MPT, 2013 WL 5701529, at *5 (D. Del.), *report and recommendation adopted*, No. 1:12-CV-646-RGA, 2013 WL 6020798 (D. Del. Nov. 12, 2013).

¹²⁸ *See, e.g.*, *RR Donnelley & Sons Co. v. Xerox Corp.*, No. 1:12-cv-06198, 2013 WL 6645472, at *3 (N.D. Ill. Dec. 16, 2013) (evaluating the statistical success rate for IPRs); *Neste Oil OYJ v. Dynamic Fuels, LLC*, No. 1:12-CV-01744-GMS, 2013 WL 3353984, at *4 (D. Del. July 2, 2013) (taking the statistical success rate for IPRs into account).

¹²⁹ *See, e.g.*, *Encap, LLC v. Scotts Co.*, No. 1:11-cv-00685, slip op. at 6 (E.D. Wis. Nov. 7, 2013) (denying and lifting stay on patents that were not subject to challenge before the USPTO).

¹³⁰ *See, e.g.*, *Lifescan, Inc. v. Shasta Techs., LLC*, No. 1:11-cv-04494, slip op. at 2 (N.D. Cal. Oct. 8, 2013) (staying third count in amended complaint related to patent subject to IPR).

¹³¹ *Clouding IP LLC v. SAP AG*, No. 1:13-cv-01456, slip op. at 1 (D. Del. Jan. 21, 2014).

¹³² *Lennon Image Techs., LLC v. Lumondi Inc.*, No. 2:13-cv-235-JRG, slip op. at 3 (E. D. Tex. Jan. 6, 2014) (movant failed to show how stay in one case would affect the other four cases).

¹³³ *e-Watch, Inc. v. ACTi Corp.*, No. CIV SA-12-CA-695, 2013 WL 6334304, at *1 (W.D. Tex. Aug. 26, 2013).

prevents a court from analyzing issue simplification on a patent-by-patent basis.¹³⁴ Accused infringers may find the simplified holistic approach beneficial when a patent owner asserts an army of patents in the same litigation. However, an IPR can only simplify a case if the petitioner challenges the relevant patent claims. Suppose that a petitioner chooses to omit certain claims from its IPR or that the PTAB refuses to grant review of certain claims in the petition. In this scenario, the results of the IPR may never simplify the relevant issues before the district court. Applying this reasoning, a court would likely decide that a motion to stay is unwarranted.¹³⁵ Thus, a court may apply the holistic approach to deny a motion to stay for an entire case when a movant fails to challenge all the patents or patent claims before the USPTO.¹³⁶

Courts are also split on how to weigh the IPR statistics. Some courts refuse to rely on mere statistics to assume that an IPR petition will be granted or that an IPR will invalidate a patent.¹³⁷ Perhaps courts are too aware that USPTO statistics are ephemeral. IPX success rates steadily declined over the years as more petitions were filed.¹³⁸ It is possible that courts expect the same trend to occur with IPRs. Nevertheless, other courts rely on the statistics as persuasive evidence. Judge Sleet, for example, has reasoned that the PTAB's elevated standard for instituting review and the PTO's history of cancelling claims results in "a greater likelihood that the PTO will cancel at least some of the challenged claims."¹³⁹

Thus, a movant in a motion to stay must thoroughly analyze whether or not the stay will simplify the issues in the litigation. Issue simplification is not simple. Courts consider a multitude of issues—the patents and patent claims, the parties joined in litigation and in the IPR, the number and scope of the IPRs, and the USPTO statistics on IPRs—to determine if a stay will simplify the issues.¹⁴⁰

3. Stage of Litigation

To evaluate the third factor—if discovery is complete and whether a trial date has been set—courts center the analysis around efficiency.¹⁴¹ First, a court may

¹³⁴ *Overland Storage, Inc. v. BTD AG*, No. 3:10-CV-1700, slip op. at 14 (S.D. Cal. Feb. 11, 2014).

¹³⁵ *See Procter & Gamble Co. v. Team Techs., Inc.*, No. 1:12-CV-552, 2013 WL 4830950, at *3–4 (S.D. Ohio Sept. 10, 2013) (addressing why an IPR that the PTAB will likely reject will not simplify the issues for trial).

¹³⁶ *See RR Donnelley & Sons Co. v. Xerox Corp.*, No. 1:12-CV-06198, 2013 WL 6645472, at *3–4 (N.D. Ill. Dec. 16, 2013).

¹³⁷ *See, e.g., id.* at *3.

¹³⁸ *See Inter Partes Reexamination Filing Data*, *supra* note 71 (reporting all claims canceled in 67% of IPXs with certificates issued through 2008 and 31% of IPXs with certificates issued through 2013).

¹³⁹ *Neste Oil OYJ v. Dynamic Fuels, LLC*, No. 1:12-CV-01744-GMS, 2013 WL 3353984, at *4 (D. Del. July 2, 2013).

¹⁴⁰ *See, e.g., id.* at 4–5 (taking into consideration statistics, patent claims, and the parties joined in litigation and IPR).

¹⁴¹ *See SenoRx, Inc. v. Hologic, Inc.*, No. 12-173-LPS-CJB, 2013 WL 144255, at *5 (D. Del. Jan. 11, 2013) ("Granting such a stay early in a case . . . advance[s] judicial efficiency and maximize[s] the

look at the amount of work remaining in a litigation.¹⁴² Second, a court may look at the amount of work complete in a litigation.¹⁴³ Finally, a court may look at the case schedule for milestones, including the end of fact discovery and the *Markman* hearing.¹⁴⁴ The third factor often leverages the undue prejudice factor to compare the stage of litigation to the stage of the IPR proceeding. As a result, the stage of litigation often receives only passing consideration.¹⁴⁵

B. Statistics on Staying Litigation Pending *Inter Partes* Reviews

Since the USPTO began offering IPR proceedings in 2012, there has been a steady growth in the number of district court motions to stay litigation. With over 170 motions to date,¹⁴⁶ a picture is developing in which parties strategically manage legal costs by shifting forums from district court to the USPTO.

In over 60% of the motions, a particular party will move to request a stay without the agreement of the opposing party.¹⁴⁷ While it may seem that litigious parties would always oppose each other's motions, nearly 30% of motions include an agreement or stipulation between the parties.¹⁴⁸ Moreover, multiple parties and renewed motions often result in multiple motions to stay in a given dispute.¹⁴⁹

Nevertheless, the trend toward requesting stays in litigation is apparent with an average grant rate above 70%.¹⁵⁰ When a motion is disputed between the parties, courts have granted the stays at about a 60% rate.¹⁵¹ This statistic shows a slight increase from motions to stay associated with IPX proceedings where courts granted only about half of the motions.¹⁵²

When both a patent owner and an accused infringer agree to stay litigation, a court will almost certainly grant a request. Notably, courts grant nearly 98% of requests in which the parties stipulate or agree to a stay.¹⁵³ This data suggests that courts recognize the inherent value in the USPTO as an alternate forum.

likelihood that neither the Court nor the parties expend their assets addressing invalid claims.”) (internal quotation marks omitted).

¹⁴² See, e.g., *Neste Oil*, 2013 WL 3353984, at *5.

¹⁴³ *Id.*

¹⁴⁴ See, e.g., *Softview LLC v. Apple Inc.*, No. 1:10-CV-00389-LPS, slip op. at 3–4 (D. Del. Sept. 4, 2013) (granting motion to stay after considering that “fact discovery [wa]s complete, as [wa]s the *Markman* process”).

¹⁴⁵ See, e.g., *Neste Oil*, 2013 WL 3353984, at *5 (devoting slightly more than a scintilla of analysis within the stage of litigation discussion).

¹⁴⁶ See *infra* Appendix I (showing 172 total motions to stay with a final ruling).

¹⁴⁷ *Id.* (showing 109 motions by party out of 172 total motions).

¹⁴⁸ *Id.* (showing 49 stipulated or agreed motions out of 172 total motions).

¹⁴⁹ *Id.* (summarizing 141 cases out of 222 in which only one motion was filed).

¹⁵⁰ *Id.* (showing courts granting 123 out of 172 motions to stay).

¹⁵¹ See *infra* Appendix II (summarizing that 66 stays were granted while 40 stays were denied).

¹⁵² Matthew A. Smith, *Stay, Suspension and Merger: Considerations for Concurrent Proceedings Involving Inter Partes Reexamination*, 90 J. PAT. & TRADEMARK OFF. SOC'Y 657, 664 (2008).

¹⁵³ See *infra* Appendix II (showing courts granting 48 out of 49 motions to stay).

The aggregate data, however, does not tell the full story. Despite the number of motions mirroring the most common forums for patent litigation,¹⁵⁴ grant rates vary significantly from one forum to another. This raises fears of forum shopping, which routinely concern Congress and the Federal Circuit. In the District of Delaware, for example, Judge Sleet has granted nine out of ten motions to stay.¹⁵⁵ The Northern District of California similarly grants motions to stay at an 84% rate.¹⁵⁶ In contrast, the Eastern District of Texas has granted fewer than 55% of the requests.¹⁵⁷ A significant number of the requests granted in the district represent motions brought by stipulation between the parties.¹⁵⁸ Strikingly, courts in the district grant fewer than 30% of requests when the parties dispute the motion to stay.¹⁵⁹ Thus, forum shopping may be a critical issue for parties looking to reduce the costs of litigation with a stay.

Although there are significant differences between forums, district courts have granted motions to stay more often for IPRs than IPXs.¹⁶⁰ In totality, there are several motivating factors that justify this change. First, IPRs complete much more quickly than IPXs.¹⁶¹ While IPXs take 30.38 to 42.05 months on average, IPRs complete within two years.¹⁶² Second, the estoppel provisions for IPRs attach more quickly than in IPXs.¹⁶³ With IPRs, estoppel attaches as soon as the PTAB renders a final decision.¹⁶⁴ In contrast, IPX estoppel attaches only after a final decision by the Federal Circuit, which may add ten months to the lengthy proceeding.¹⁶⁵ Third, IPRs permit the PTAB to join parties and petitions to promote efficiency.¹⁶⁶ Fourth, IPRs are a useful tool for all patents, regardless of the date of filing. Under the previous proceeding, patents filed before November 29, 1999, were exempt from scrutiny.¹⁶⁷ Finally, IPRs permit parties to settle rather than complete the review. District courts strongly favor settlement discussions between parties to help control their dockets and IPRs enhance the probability of settlement, saving precious judicial resources.¹⁶⁸ Thus, the PTAB provides an alternative to litigating patent inva-

¹⁵⁴ See *infra* Appendix III (showing the top five courts as the Northern District of California, the District of Delaware, the Central District of California, the Eastern District of Texas, and the Northern District of Illinois).

¹⁵⁵ *Id.* (listing results for Judge Gregory M. Sleet in DED).

¹⁵⁶ *Id.* (listing 21 of 25 motions granted).

¹⁵⁷ *Id.* (listing 6 of 11 motions granted).

¹⁵⁸ See *infra* Appendix I (listing 3 of 6 granted motions requested by stipulation).

¹⁵⁹ *Id.* (listing 2 of 7 motions granted).

¹⁶⁰ See *supra* text accompanying notes 151–52.

¹⁶¹ See *supra* Part II.B (comparing IPR and IPX durations).

¹⁶² *Id.*

¹⁶³ See *supra* Part II.G (comparing IPR and IPX estoppel).

¹⁶⁴ *Id.*

¹⁶⁵ See *Median Time to Disposition in Cases Terminated After Hearing or Submission*, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT, <http://www.ca9c.uscourts.gov> (last visited Jan. 8, 2014) (navigate to “The Court” menu; then navigate to “Statistics” hyperlink; then follow the detailed table of data “2004-2013” hyperlink).

¹⁶⁶ See *supra* Part II.A (discussing joinder).

¹⁶⁷ See *supra* Part III.

¹⁶⁸ See *supra* Part II.G (discussing settlement provisions for IPRs).

lidity in district court and has the potential to benefit patent owners, accused infringers, and the judicial system.

V. A Settlement Tool

In addition to serving as an alternative to litigation where patents are invalidated or narrowed in scope, IPRs also serve as a useful tool in inducing parties entangled in litigation to settle. The primary driver of settlements is often the cost of litigation. An IPR is significantly cheaper than district court litigation, but a petitioner must tailor the filing of the IPR to the particular dispute. With the aforementioned estoppel provisions, patent owners may favor settlement over the risk of exhausting their patent rights. On the other hand, an alleged infringer may consider an IPR as a tool in avoiding treble damages for willful infringement. The true value of IPRs as a settlement tool, however, is inversely dependent on the number of claims and patents at issue in the dispute.

A. Litigation Costs

One of the most compelling sources of settlement lies in avoiding future litigation costs. If future litigation costs approach the expected benefit of continued litigation, a rational party may wish to settle a dispute rather than continue to litigate it.¹⁶⁹ Patent litigation, in particular, can be expensive. According to the most recent survey conducted by the American Intellectual Property Law Association (AIPLA), the minimum cost of a patent litigation from filing through the end of discovery is \$350,000.¹⁷⁰ If the case involves more than \$25 million at risk, the median cost rises to \$3 million.¹⁷¹ If a party wishes to litigate the case through the end of the trial, the total inclusive cost of the litigation ranges from \$700,000 to \$5.5 million.¹⁷²

In comparison, the cost of litigating an IPR is relatively low. The USPTO has estimated that the average IPR will cost \$193,000.¹⁷³ While this cost would naturally increase with additional claims, patents, or both, the cost tradeoff between litigation and USPTO proceedings is an important consideration. As the claims at issue increase, more IPRs need to be filed and the costs for a given IPR increase. If claims in litigation are spread across multiple patents, then a motion to stay is most often granted when all the claims across all the patents are challenged in IPRs.¹⁷⁴

¹⁶⁹ See, e.g., Keith Leffler & Cristofer Leffler, *Efficiency Trade-Offs in Patent Litigation Settlements: Analysis Gone Astray?*, 39 U.S.F. L. REV. 33, 38–39 (2004) (discussing congruent interests between patent challengers and consumers, and the role of private settlement agreements).

¹⁷⁰ AM. INTELLECTUAL PROP. LAW ASS'N, REPORT OF THE ECONOMIC SURVEY 2013, at 34 (2013).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Changes to Implement Inter Partes Review Proceedings, 77 Fed. Reg. 7041-01, 7057 (proposed Feb. 10, 2012) (to be codified at 37 C.F.R. pt. 42) (estimating that a “60% weighting factor should capture the typical costs of an inter partes review” where the basis is \$322,000, the average reported cost of two-party interference proceedings through the end of the preliminary motion phase).

¹⁷⁴ See *supra* Part IV.A.2 (addressing how courts determine if an IPR will simplify the relevant issues).

Petitioners, however, can defray the costs of USPTO proceedings by sharing them with other interested parties, not unlike district court litigation costs.

B. Timing

To maximize the probability of settlement, a petitioner must carefully time the filing of an IPR. She must have had notice of the patent's existence, via a freedom-to-operate search or a demand letter, and sufficient time to prepare an IPR petition. The USPTO estimates that the preparation of an IPR petition for filing will require 135 attorney hours or \$46,000 with a median billing rate of \$340 an hour.¹⁷⁵ Even when a party knows there is a strong case for invalidating a known patent, it may wait to file an IPR and file suit in district court first to defer the investment necessary to prepare a petition.

In contrast, filing an IPR related to existing litigation is an easier proposition. There are two primary advantages for an alleged infringer to file an IPR. First, the filing of an IPR may compel a court to stay proceedings pending the resolution of the IPR. This avenue has the potential to save the defendant significant sums of money by shifting much of the invalidity litigation to another forum. Second, the filing of an IPR may compel the patent owner to settle because of the threat of an IPR invalidating the patent. If the patent owner is suing many alleged infringers, filing an IPR represents a risk to the patentee. If the patent, or particularly valuable claims within the patent, are subject to an IPR and the PTAB finds them invalid, the patent owner would be estopped in district court from arguing against invalidity and would be estopped from bringing additional infringement actions. Thus, a potential infringer of a patent often will wait for district court litigation to commence before considering an IPR. Conversely, a patent owner can benefit when the accused infringer files suit first, particularly if the patent owner includes a claim challenging the validity of the patent.¹⁷⁶

C. Estoppel

Because estoppel applies to both the petitioner and the patent owner, settlement may be a mutually beneficial interest between the parties. A patent owner may want to settle to avoid being estopped from arguing alternative positions in district court or from bringing subsequent cases against other alleged infringers. A petitioner may want to settle to avoid the risk of litigation in court or the threat of a jury trial.¹⁷⁷

¹⁷⁵ Changes to Implement Inter Partes Review Proceedings, 77 Fed. Reg. 7041-01, 7057 (proposed Feb. 10, 2012) (to be codified at 37 C.F.R. pt. 42) (estimating that IPR filings will cost the same as IPX filings).

¹⁷⁶ See 37 C.F.R. § 42.101(a) (2014) (prohibiting petitioners who previously "challeng[ed] the validity of a claim of the patent" in court from filing an IPR).

¹⁷⁷ See John R. Allison, Mark A. Lemley & Joshua Walker, *Patent Quality and Settlement Among Repeat Patent Litigants*, 99 GEO. L.J. 677, 681, 694 (2011) (noting that 9.2% cases win on the merits and 89.6% of cases settle).

The balance, however, is in the petitioner's favor if the PTAB institutes a review. By granting review, the PTAB is stating in effect that the petitioner has a genuine argument. Given that the standard for instituting review is similar to how district courts determine preliminary injunctions, it would not be unreasonable to expect that settlement rates after the institution of an IPR mirror settlement rates in district court after a judge grants a motion for preliminary injunction. Moreover, a substantial majority of patent claims reviewed by the PTAB have been invalidated, leading to a perception of the PTAB as a patent killer.¹⁷⁸ A patent owner, therefore, may strongly consider settlement to avoid the risks of estoppel.

D. Willfulness

In addition to using IPRs to avoid district court litigation, alleged infringers may be tempted to file IPRs after obtaining an opinion of counsel. Doing so would certainly bolster a potential defense to willfulness in a future patent litigation.¹⁷⁹ The cost of doing so, however, may be prohibitive. IPRs cost significantly more than mere legal opinions with a median cost of \$193,000.¹⁸⁰ In contrast, patent opinions range in cost between \$10,000 and \$100,000.¹⁸¹ Only with the complicated opinions that cost closer to \$100,000 does any post-grant proceeding make financial sense. Even in these cases, however, multiple IPRs may increase costs beyond the median amount estimated by the USPTO. Thus, a detailed economic analysis is necessary to determine the best course in each situation.

An alleged infringer, however, may be more interested in an ex parte reexamination as a more cost-effective approach. Ex parte reexaminations filings start at \$12,000,¹⁸² and the AIPLA has reported that the median filing charge is only \$15,000.¹⁸³ If an infringement action has not been filed, ex parte reexaminations also benefit from anonymity where the USPTO does not reveal a petitioner's identity to the patent owner. Thus, a petitioner may avoid the threat of a parallel district court litigation with an ex parte reexamination. A successful willfulness defense using USPTO proceedings may discourage a patent owner from filing suit, or may encourage a patent owner to settle after losing the ability to collect treble damages.

¹⁷⁸ See Scott A. McKeown, *PTAB Closely Scrutinizes Petition Grounds*, PATENTS POST-GRANT (April 18, 2013), <http://www.patentspostgrant.com/lang/en/2013/04/ipr-petition-grounds-closely-scrutinized> (describing "patent killer" sentiment).

¹⁷⁹ See *Ultratec, Inc. v. Sorenson Commc'ns, Inc.*, No. 3:13-CV-00346, 2014 WL 4265847, at *35 (W.D. Wis. Aug. 28, 2014) (reasoning that IPRs "should be entitled to more weight in the reasonableness analysis than was given to the prior re-examination procedure").

¹⁸⁰ See *supra* note 170 and accompanying text.

¹⁸¹ See Kimberly A. Moore, *Empirical Statistics on Willful Patent Infringement*, 14 FED. CIR. B.J. 227, 228 n.5 (2004) (noting that patent opinions can cost \$100,000 or more).

¹⁸² U.S. Patent & Trademark Office, *Manual of Patent Examining Procedure* § 1.20 (9th ed. Mar. 2014).

¹⁸³ AM. INTELLECTUAL PROP. LAW ASS'N, *supra* note 167, at 27.

VI. Risks

While IPRs can be a cost effective means of invalidating patents and can induce settlements, there are also many risks in the process. Most importantly, petitioners can only challenge patents on limited grounds. Meanwhile, a patent owner may amend claims during an IPR. Petitioners are often hamstrung by restrictive page limit requirements and estoppel considerations. Finally, joint defense petitions to the PTAB can be difficult to manage and may impose limitations on the positions a party may take.

A. Limitations of Invalidity Challenges

A petitioner for an IPR is not free to assert any grounds for review. Instead, Congress limited petitioners to issues related to prior art.¹⁸⁴ Petitioners may not assert a prior public use, on sale bar, or something other than a patent or printed publication. Also, petitioners may not assert any grounds for review under § 112, including written description, enablement, best mode, and indefiniteness.¹⁸⁵

Courts have used these limitations to reason that IPRs will not simplify all the invalidity issues in a dispute. In contrast, PGRs permit any grounds for review except for best mode.¹⁸⁶ Courts may reason that because of the narrow scope of IPRs, a motion to stay in litigation is inappropriate.¹⁸⁷ This risk, however, is likely determined on a case-by-case basis where a court ruling on a motion to stay will consider both the magnitude and strength of the invalidity issues relative to the scope of the PTAB proceeding.

B. Patent Owner Amendments

One of the risks of any post-grant proceeding lies in the patent owner's ability to amend the claims. To combat this risk, the PTAB has defined strict limits on the patent owner's freedom to amend claims where "only one substitute claim . . . [can] replace each challenged claim."¹⁸⁸ Amendments must relate to the grounds of invalidity raised during the PTAB's review.¹⁸⁹ Most importantly, a patent owner has a high burden for each proposed substitute claim where at least a patentable distinction over the prior art must be made.¹⁹⁰ Thus, claim amendments are difficult for patent owners where "mere conclusory statement[s] . . . [are] on its face inadequate."¹⁹¹

¹⁸⁴ See 35 U.S.C. § 311(b) (2013) (limiting petitions to section 102 or 103).

¹⁸⁵ See 37 C.F.R. § 42.104(b)(3) (2014) (requiring a petitioner to provide a suggested claim construction).

¹⁸⁶ *Id.* § 42.204 (2014).

¹⁸⁷ See *TruePosition, Inc. v. Polaris Wireless, Inc.*, No. 1:12-CV-00646, 2013 WL 5701529, at *3 (D. Del.), *report and recommendation adopted*, No. CV 12-646-RGA, 2013 WL 6020798 (D. Del. Nov. 12, 2013) (noting the lack of review of issues under § 112 during IPRs).

¹⁸⁸ *Idle Free Sys., Inc. v. Bergstrom, Inc.*, No. IPR2012-00027, 2013 WL 5947697, at *3 (P.T.A.B. June 11, 2013).

¹⁸⁹ 37 C.F.R. § 42.121 (2014).

¹⁹⁰ *Idle*, 2013 WL 5947697, at *4.

¹⁹¹ *Id.* at *5.

C. Page Limits

Unlike district courts, the PTAB strictly enforces page limitations for all filings.¹⁹² Parties are limited to sixty pages for a petition and fifteen pages for a motion.¹⁹³ In contrast, IPXs did not have any page limits.¹⁹⁴ IPXs permitted petitions with several hundred pages and did not require parties to select a narrow set of the most persuasive arguments.¹⁹⁵ The only page limit exception that survives the transition from IPX proceedings to IPR proceedings is the exemption for appendices and declarations.¹⁹⁶ Under the PTAB's confinement, parties may prefer to settle rather than select which arguments to make under such a restricted limit where estoppel attaches before an appeal to the Federal Circuit.

D. Joint Petitions

While the risks associated with the scope of IPRs, patent owner amendments, and page limits are well known, one of the more complicated risks with IPRs lies in joint defense groups. Joint defense group agreements often are drafted before parties decide to file an IPR petition. An agreement, however, may control a party's ability to file a petition or impose a duty on a party to inform members of the group before filing. In some situations, agreements may even state that all parties must join the IPR filing.

Parties may also agree to joint petitions to save on the costs of an IPR. Before making this decision, however, a party should consider whether or not it wishes to subscribe to the group's approach to the proceeding. If a party within the group wishes to change direction after the IPR is instituted by replacing its representation, the PTAB is much less forgiving than district court judges and will likely deny the request, forcing the retention of the original representation.¹⁹⁷

In addition to the PTAB's scrutiny of joint defense groups, courts have evaluated individual parties in joint defense groups with particular concern when considering motions to stay.¹⁹⁸ Forming a joint defense group may preclude any stays in

¹⁹² See *Idle Free Sys., Inc. v. Bergstrom, Inc.*, No. IPR2012-00027, Paper 26, at *2 (P.T.A.B. June 18, 2013) (finding "no good reason . . . to authorize additional pages for the motion").

¹⁹³ 37 C.F.R. § 42.24(a)(1) (2014).

¹⁹⁴ Changes to Implement Inter Partes Review Proceedings, 77 Fed. Reg. 7041-01, 7053 (proposed Feb. 10, 2012) (to be codified at 37 C.F.R. pt. 42) (noting the "lengthy and unwarranted delays" when "parties had little incentive to focus the issues for decision").

¹⁹⁵ Andrei Iancu, Ben Haber & Elizabeth Iglesias, *Inter Partes Review Is the New Normal: What Has Been Lost? What Has Been Gained?*, 40 AIPLA Q.J. 539, 570 (2012) (providing an example of a petition several hundred pages in length).

¹⁹⁶ *Id.* at 547.

¹⁹⁷ See Ryan Davis, *Apple Stuck with Norton Rose Fulbright in AIA Review*, LAW360 (Mar. 28, 2014, 7:09 PM), <http://www.law360.com/articles/522940/apple-stuck-with-norton-rose-fulbright-in-aia-review> (discussing PTAB's refusal to allow one petitioner to split with joint petitioners without consent from the patent owner).

¹⁹⁸ See *Parallel Networks, LLC v. KOG Games Inc.*, No. 1:13-cv-00178, slip op. at 1 (D. Del. Feb. 5, 2014) (granting motion to stay for all parties except for Ignite Techs. because one of the patents subject to an IPR was not asserted against them); *Am. Vehicular Scis. LLC v. Toyota Motor Corp.*, No. 6:12-cv-00404, slip op. at 3 (E.D. Tex. Feb. 19, 2014) (granting stay only for Toyota).

litigation because of the undue prejudice on the patent owner and the efficiency of the group. Thus, joint defense groups present challenges before both the PTAB and the district court when filing an IPR.

E. Evidence in Jury Trial

While the benefits of filing an IPR may be great, petitioners face significant risks associated with the PTAB's decision to institute review. If the PTAB does not grant review, evidence of this failure may be admissible at trial in district court.¹⁹⁹ Any jury who hears such evidence is unlikely to be convinced of a patent claim's invalidity in light of the PTAB's decision and the perceived status of the USPTO as an expert on patent matters.²⁰⁰ Thus, a court may exclude evidence of a pending IPR due to the prejudicial, confusing, and often misleading nature of USPTO proceedings.²⁰¹

VII. Future of *Inter Partes* Reviews

Although the IPR proceeding was recently instituted, Congress is continually considering changes to the law to improve the viability of the PTAB as a forum. While parallel challenges continue to be a problem for patent owners and alleged infringers alike,²⁰² several other issues have arisen.²⁰³

A. Relaxation of Estoppel Provision

Some practitioners have called for a relaxation in the estoppel provisions.²⁰⁴ During the negotiations for the original AIA, Congress initially proposed to phase out the IPX proceeding and replace it with the PGR proceeding.²⁰⁵ Then, a compromise resulted in the creation of the IPR proceeding, but Congress failed to adopt the relaxed "actually raised" estoppel standard and maintained the "could have raised" language instead.²⁰⁶ To correct its oversight, Congress is now considering a

¹⁹⁹ For an analysis of why such evidence should be prohibited, see *InterDigital Commc'ns, Inc. v. Nokia Corp.*, No. 1:13-CV-00010-RGA, slip op. at 1–2 (D. Del. Sept. 19, 2014).

²⁰⁰ See Ryan Davis, *BlackBerry Can't Mention AIA Review at Patent Trial*, LAW360 (Mar. 28, 2014, 5:37 PM), <http://www.law360.com/articles/522936/blackberry-can-t-mention-aia-review-at-patent-trial> (granting patent owner's motion in limine to preclude alleged infringer from "offering evidence of the pending inter partes review process").

²⁰¹ See *Server Tech., Inc. v. Am. Power Conversion Corp.*, No. 3:06-CV-00698-LRH, 2014 WL 1308617, at *4 (D. Nev. Mar. 31, 2014) (excluding evidence from a pending reexamination because of its prejudicial effect and risk of confusing the jury).

²⁰² See Charles Gorenstein, *Is It Time for a Patch To Be Applied to the AIA?*, LAW360 (May 16, 2014, 12:44 PM), <http://www.law360.com/articles/535185/is-it-time-for-a-patch-to-be-applied-to-the-aia> (discussing problems with parallel litigation).

²⁰³ See 158 CONG. REC. H7455-01 (statement of Rep. Smith) (proposing a correction that was later ratified for the dead zone of patents filed under the previous regime, but after the institution of IPR proceedings).

²⁰⁴ See *Small Businesses and Patent Abuse: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013), 2013 WL 6628582 (statement of Philip S. Johnson, Chief Intellectual Property Counsel, Johnson & Johnson).

²⁰⁵ Jeffrey P. Kushan, *The Fruits of the Convulved Road to Patent Reform: The New Invalidity Proceedings of the Patent and Trademark Office*, 30 YALE L. & POL'Y REV. 385, 400 (2012).

²⁰⁶ *Id.* at 401.

proposal to replace the “could have raised” estoppel standard with an “actually raised” standard for both PGRs and IPRs.²⁰⁷ While this proposal seems to benefit petitioners who file IPRs, the impact is far from clear. Under a relaxed estoppel standard, district courts will likely be more hesitant to grant requests to stay litigation when a petitioner is not estopped on any grounds other than what was actually raised before the PTAB. Thus, Congress may delay any changes to the estoppel standard until the impacts are evaluated in depth.

B. Unification of Claim Interpretation Standards

In addition to the potential for a shift in estoppel provisions, Congress is considering the unification of claim interpretation standards between the PTAB and district courts.²⁰⁸ The PTAB currently follows the “broadest reasonable interpretation” standard.²⁰⁹ In contrast, district courts use the “plain and ordinary meaning” standard.²¹⁰ A unification of standards would support the view of some judges and avoid the problems that result when district courts arrive at a claim interpretation that conflicts with the USPTO. Moreover, district courts may be more willing to grant requests to stay litigation if the PTAB provides the same claim construction that the court would otherwise provide. This change would also discourage forum shopping between district courts and the PTAB to invalidate patents. Thus, these proposed changes may improve the viability of the PTAB and the IPR proceeding.

VIII. Conclusion

While the AIA did usher the United States into a modern patent priority system, it also provided a viable alternative tribunal to challenge issued patents. The efficient IPR proceedings before the PTAB stand in contrast to the unduly long IPX proceedings before the BPAI. Many other differences between the two proceedings reflect a desire to enable the USPTO to be the specialized tribunal for issues of patent validity. To a large extent, the popularity of the proceeding since institution has affirmed this aspiration. Moreover, motions to stay litigation before district courts are granted at increasing rates.

As a part of a settlement toolbox, patent owners and challengers alike should consider the use of IPRs to avoid the burdens of litigation while protecting their interests. Nevertheless, IPRs have their risks. Limited grounds for challenging pa-

²⁰⁷ See *Small Businesses and Patent Abuse*, *supra* note 201 (referring to the elimination of the original AIA estoppel provision).

²⁰⁸ See *Small Businesses and Patent Abuse: Hearing Before the S. Judiciary Comm.*, 113th Cong., 2013 WL 6673629 (statement of Q. Todd Dickinson, Executive Director, American Intellectual Property Law Association).

²⁰⁹ *Flo Healthcare Solutions, LLC v. Kappos*, 697 F.3d 1367, 1382–83 (Fed. Cir. 2012) (Newman, J., additional views).

²¹⁰ See, e.g., *Phillips v. AWH Corp.*, No. 97MK212(CBS), 2002 WL 32827996, at *11 (D. Colo. Nov. 22, 2002) (adopting the plain meaning of the claim term); *Toro Co. v. White Consol. Indus., Inc.*, 920 F. Supp. 1008, 1016 (D. Minn. 1996) (reviewing the ordinary meaning of the claim language); *Vitronics Corp. v. Conceptor, Inc.*, No. C-91-696-L, 1992 WL 515321, at *5 (D.N.H. July 20, 1992) (noting that claim terms should be given their ordinary and accustomed meaning).

tents and restrictive page limit requirements force parties to focus the review on the key issues. Despite this criticism, Congress appears amenable to further streamlining the IPR process to bolster the capability of the USPTO. Patent litigants, therefore, should be mindful of the new proceeding to navigate district court litigation with the best balance between costs, patent rights, and the public's interest.

Appendix I. Motions to Stay Pending *Inter Partes* Reviews

Case Name	Case No	Date	Cause	Ruling	Judge
Bennett Regulator Guards, Inc. v. Atlanta Gas Light Co.	5-12-cv-01040 (OHND)	8/1/2013	Stipulated/Agreed	Granted	John R. Adams
Pentair Water Pool and Spa Inc. v. Fail-Safe LLC	2-13-cv-01321 (WIED)	12/30/2013	Motion by Party	Granted	Lynn Adelman
Cheetah Omni, LCC v. USA	1-11-cv-00255 (COFC)	6/7/2013	Motion by Party	Granted	Francis M. Allegra
Streetspace, Inc. v. Google, Inc.	3-11-cv-04574 (CAND)	12/4/2013	Sue Sponte	N/A	William H. Alsup
Evolutionary Intelligence, LLC v. Apple Inc.	3-13-cv-04201 (CAND)	1/9/2014	Motion by Party	Granted	William H. Alsup
Game Controller Technology LLC v. Sony Computer Entertainment American, LLC	1-13-cv-22795 (FLSD)	10/25/2013	Motion by Party	Denied	Cecila M. Altonaga
Riverbed Technology, Inc. v. Silver Peak Systems, Inc.	1-11-cv-00484 (DED)	9/11/2013	Motion by Party	Granted	Richard G. Andrews
Walker Digital LLC v. Microsoft Corp.	1-11-cv-00696 (DED)	8/5/2013	Stipulated/Agreed	Granted	Richard G. Andrews
Walker Digital LLC v. Microsoft Corp.	1-11-cv-00991 (DED)	7/11/2013	Stipulated/Agreed	Granted	Richard G. Andrews
TruePosition, Inc. v. Polaris Wireless, Inc.	1-12-cv-00646 (DED)	11/12/2013	Review of Magistrate Report Re	Denied	Richard G. Andrews
TruePosition, Inc. v. Polaris Wireless, Inc.	1-12-cv-00646 (DED)	11/12/2013	Motion by Party	N/A	Richard G. Andrews
ViiV Healthcare Co. v. Mylan Inc.	1-12-cv-01065 (DED)	9/17/2013	Motion by Party	Denied	Richard G. Andrews
Parallel Networks, LLC v. KOG Games Inc.	1-13-cv-00178 (DED)	2/5/2014	Motion by Party	Granted	Richard G. Andrews
e-Watch, Inc. v. Avigilon Corp.	4-13-cv-00347 (TXSD)	12/17/2013	Motion to Clarify Order Re	Granted	Nancy F. Atlas

Case Name	Case No	Date	Cause	Ruling	Judge
e-Watch, Inc. v. Avigilon Corp.	4-13-cv-00347 (TXSD)	11/15/2013	Motion by Party	N/A	Nancy F. Atlas
MGT Gaming, Inc. v. WMS Gaming, Inc.	3-13-cv-00691 (MSSD)	12/13/2013	Motion by Party	Denied	F. Keith Ball
Warsaw Orthopedic Inc. v. NuVasive Inc.	3-12-cv-02738 (CASD)	2/28/2014	Stipulated/Agreed	N/A	Cathy Ann Bencivengo
Warsaw Orthopedic Inc. v. NuVasive Inc.	3-12-cv-02738 (CASD)	2/18/2014	Motion to Clarify Order Re	N/A	Cathy Ann Bencivengo
Warsaw Orthopedic Inc. v. NuVasive Inc.	3-12-cv-02738 (CASD)	1/10/2014	Motion by Party	N/A	Cathy Ann Bencivengo
Warsaw Orthopedic Inc. v. NuVasive Inc.	3-12-cv-02738 (CASD)	5/30/2013	Motion by Party	Other	Cathy Ann Bencivengo
Star EnviroTech, Inc. v. Redline Detection, LLC	8-12-cv-01861 (CACD)	4/3/2013	Motion by Party	Granted	Jesus G. Bernal
e-Watch, Inc. v. Mobotix Corp.	5-12-cv-00492 (TXWD)	6/14/2013	Review of Magistrate Report Re	Granted	Fred Biery
e-Watch, Inc. v. Mobotix Corp.	5-12-cv-00492 (TXWD)	6/14/2013	Motion by Party	N/A	Fred Biery
e-Watch, Inc. v. ACTi Corp.	5-12-cv-00695 (TXWD)	8/26/2013	Review of Magistrate Report Re	Granted	Fred Biery
e-Watch, Inc. v. ACTi Corp.	5-12-cv-00695 (TXWD)	8/26/2013	Motion by Party	N/A	Fred Biery
Proctor & Gamble Co. v. Team Technologies, Inc.	1-12-cv-00552 (OHSD)	2/11/2014	Renewed Motion	Denied	Timothy S. Black
Proctor & Gamble Co. v. Team Technologies, Inc.	1-12-cv-00552 (OHSD)	9/10/2013	Motion by Party	N/A	Timothy S. Black
NUtech Ventures v. Norman Noble, Inc.	1-12-cv-02326 (OHND)	5/30/2013	Motion by Party	Granted	Christopher A. Boyko
Fiber, LLC v. Ciena Corp.	1-13-cv-00840(CO D)	7/18/2013	Stipulated/Agreed	Granted	Philip A. Brimmer

Case Name	Case No	Date	Cause	Ruling	Judge
Destination Maternity Corp. v. Target Corp.	2-12-cv-05680 (PAED)	3/24/2014	Motion by Party	Granted	Anita B. Brody
Princeton Digital Image Corp. v. Harmonix Music	1-12-cv-01461 (DED)	1/15/2014	Motion by Party	Granted	Christopher J. Burke
CTP Innovations, LCC v. American Printing Co., Inc.	3-13-cv-00582 (TNMD)	8/8/2013	Stipulated/Agreed	Granted	Todd Campbell
CTP Innovations, LLC v. Benson Integrated Marketing	1-13-cv-02166 (GAND)	8/23/2013	Motion by Party	Granted	Julie E. Carnes
CTP Innovations, LLC v. Rohrer Corp.	1-13-cv-02171 (GAND)	8/23/2013	Stipulated/Agreed	Granted	Julie E. Carnes
Otto Bock HealthCare LP v. Ossur Hf	8-13-cv-00891 (CACD)	12/16/2013	Motion by Party	Denied	Cormac J. Carney
Signal Enhancement Technologies LLC v. Broadcom Corp.	8-12-cv-02072 (CACD)	1/30/2014	Stipulated/Agreed	Granted	David O. Carter
eCharge Licensing, LLC v. Square, Inc.	1-13-cv-06445 (ILND)	1/16/2014	Stipulated/Agreed	Granted	Edmond E. Chang
eCharge Licensing, LLC v. Square, Inc.	1-13-cv-06445 (ILND)	1/16/2014	Stipulated/Agreed	N/A	Edmond E. Chang
Samuels v. TriVascular Corp.	3-13-cv-02261 (CAND)	8/28/2013	Stipulated/Agreed	Granted	Edward M. Chen
Evoluntary Intelligence, LLC v. Foursquare Labs, Inc.	3-13-cv-04203 (CAND)	1/10/2014	Motion by Party	Granted	Maxine M. Chesney
Magna Electronics, Inc. v. Valeo, Inc.	2-13-cv-11376 (MIED)	12/9/2013	Motion by Party	Granted	Avern C. Cohn
RR Donnelley & Sons Co. v. Xerox Corp.	1-12-cv-06198 (ILND)	3/17/2014	Motion to Clarify Order Re	Denied	Sharon Johnson Coleman
RR Donnelley & Sons Co. v. Xerox Corp.	1-12-cv-06198 (ILND)	12/16/2013	Motion by Party	N/A	Sharon Johnson Coleman
Wildcat Licensing WI, LLC v. Johnson Controls, Inc.	3-13-cv-00328 (WIWD)	1/22/2014	Stipulated/Agreed	Granted	William M. Conley

Case Name	Case No	Date	Cause	Ruling	Judge
IP Co. v. Tropos Networks, Inc.	1-06-cv-00585 (GAND)	3/5/2014	Motion by Party	Granted	Clarence Cooper
WhitServe LLC v. Computer Packages, Inc.	3-06-cv-01935 (CTD)	3/4/2014	Motion by Party	Denied	Alfred V. Covello
Ultratec, Inc. v. Sorenson Communications, Inc.	3-13-cv-00346 (WIWD)	11/14/2013	Motion by Party	Denied	Barbara B. Crabb
TAS Energy, Inc. v. San Diego Gas & Electric Co.	3-12-cv-02777 (CASD)	2/26/2014	Motion by Party	Granted	Gonzalo P. Curiel
Automatic Manufacturing Systems, Inc. v. Primera Technology, Inc.	6-12-cv-01727 (FLMD)	11/21/2013	Motion by Party	Granted	Roy B. Dalton, Jr.
Automatic Manufacturing Systems, Inc. v. Primera Technology, Inc.	6-12-cv-01727 (FLMD)	5/13/2013	Motion by Party	N/A	Roy B. Dalton, Jr.
PersonalWeb Technologies LLC v. Facebook Inc.	5-13-cv-01356 (CAND)	1/13/2014	Motion by Party	Granted	Edward J. Davila
Pride Mobility Products Corp. v. Permobil, Inc.	2-13-cv-01999 (PAED)	8/14/2013	Motion by Party	Granted	Legrome D. Davis
Uniloc USA, Inc. v. Distinctive Developments Ltd.	6-12-cv-00462 (TXED)	8/6/2013	Stipulated/Agreed	Granted	Leonard Davis
Pentair Water Pool and Spa, Inc. v. Hayward Industries, Inc.	5-11-cv-00459 (NCED)	1/31/2014	Renewed Motion	Other	James C. Dever, III
Escort Inc. v. K-40 Electronics, LLC	1-12-cv-00937 (OHSD)	5/20/2013	Motion by Party	Granted	Susan J. Dlott
Everlight Electronics Co. v. Nichia Corp.	4-12-cv-11758 (MIED)	4/30/2013	Motion by Party	Denied	Gershwin A. Drain
Unwired Planet, LLC v. Google, Inc.	3-12-cv-00504 (NVD)	1/27/2014	Motion by Party	Granted	Miranda M. Du
Bernina International AG v. Handi Quilter, Inc.	2-12-cv-07079 (PAED)	7/1/2013	Stipulated/Agreed	Granted	Jan E. Dubois
Interface, Inc. v. Tandus Flooring, Inc.	1-13-cv-03352 (GAND)	1/22/2014	Motion by Party	Granted	William S. Duffey, Jr

Case Name	Case No	Date	Cause	Ruling	Judge
Interface, Inc. v. J&J Industries, Inc.	1-13-cv-03353 (GAND)	1/22/2014	Stipulated/Agreed	Granted	William S. Duffey, Jr
Interface, Inc. v. Tandus Flooring, Inc.	4-13-cv-00046 (GAND)	11/5/2013	Motion by Party	Granted	William S. Duffey, Jr
Interface, Inc. v. J&J Industries, Inc.	4-13-cv-00047 (GAND)	1/22/2014	Stipulated/Agreed	Granted	William S. Duffey, Jr
Nexans, Inc. v. Belden, Inc.	1-12-cv-01491 (DED)	2/19/2014	Motion by Party	N/A	Sherry R. Fallon
Centria v. ATAS International, Inc.	2-13-cv-00309 (PAWD)	5/16/2013	Stipulated/Agreed	Granted	Nora Barry Fischer
Centria v. ATAS International, Inc.	2-13-cv-00309 (PAWD)	5/10/2013	Motion by Party	N/A	Nora Barry Fischer
Westinghouse Electric Co. LLC v. Zetec, Inc.	2-13-cv-01124 (PAWD)	2/13/2014	Motion by Party	N/A	Nora Barry Fischer
Westinghouse Electric Co. LLC v. Zetec, Inc.	2-13-cv-01124 (PAWD)	1/29/2014	Motion by Party	N/A	Nora Barry Fischer
Westinghouse Electric Co. LLC v. Zetec, Inc.	2-31-cv-01124 (PAWD)	3/3/2014	Motion by Party	Denied	Nora Barry Fischer
Aqua Products, Inc. v. Zodiac Pool Systems, Inc.	1-12-cv-09342 (NYSB)	9/24/2013	Motion by Party	Granted	Katherine B. Forrest
Aqua Products, Inc. v. Zodiac Pool Systems, Inc.	1-12-cv-09342 (NYSB)	9/9/2013	Motion by Party	N/A	Katherine B. Forrest
Aqua Products, Inc. v. Zodiac Pool Systems, Inc.	1-12-cv-09342 (NYSB)	7/29/2013	Motion by Party	N/A	Katherine B. Forrest
ComplementSoft, LCC v. SAS Institute Inc.	1-12-cv-07372 (ILND)	5/8/2013	Motion by Party	Granted	Jeffrey T. Gilbert
Lennon Image Technologies, LLC v. Lumondi Inc.	2-13-cv-00238 (TXED)	1/6/2014	Motion by Party	Denied	Rodney Gilstrap
Black & Decker, Inc. v. Positec USA, Inc.	1-13-cv-03075 (ILND)	10/1/2013	Motion by Party	Granted	Joan b. Gottschall

Case Name	Case No	Date	Cause	Ruling	Judge
Pi-Net International, Inc. v. Focus Business Bank	5-12-cv-04958 (CAND)	10/17/2013	Motion by Party	Granted	Paul S. Grewal
Pi-Net International, Inc. v. Focus Business Bank	5-12-cv-04958 (CAND)	10/3/2013	Motion to Reconsider	N/A	Paul S. Grewal
Pi-Net International, Inc. v. Focus Business Bank	5-12-cv-04958 (CAND)	8/16/2013	Motion by Party	N/A	Paul S. Grewal
Pi-Net International, Inc. v. Presidio Bank	5-12-cv-04962 (CAND)	8/19/2013	Motion by Party	Other	Paul S. Grewal
Encap LLC v. Scotts Co.	1-11-cv-00685 (WIED)	11/7/2013	Motion by Party	Denied	William C. Griesbach
Universal Electronics, Inc. v. Universal Remote Control Inc.	8-12-cv-00329 (CACD)	5/2/2013	Motion by Party	Denied	Andrew J. Guilford
Pi-Net International, Inc. v. Enterprise Holdings, Inc.	2-12-cv-03970 (CACD)	7/2/2013	Sua Sponte	Granted	Philip S. Gutierrez
Pi-Net International, Inc. v. Avis Budget Group, Inc.	2-12-cv-04036 (CACD)	8/5/2013	Motion to Reconsider	Denied	Philip S. Gutierrez
Pi-Net International, Inc. v. Ace Rent A Car, Inc.	2-12-cv-04303 (CACD)	5/29/2013	Motion by Party	Denied	Philip S. Gutierrez
Pi-Net International Inc. v. Hertz Corp.	2-12-cv-10012 (CACD)	8/5/2013	Motion to Reconsider	N/A	Philip S. Gutierrez
Pi-Net International Inc. v. Hertz Corp.	2-12-cv-10012 (CACD)	6/5/2013	Motion by Party	Granted	Philip S. Gutierrez
Perfect Surgical Techniques, Inc. v. Olympus Surgical	4-12-cv-05967 (CAND)	12/30/2013	Stipulated/Agreed	Granted	Phyllis J. Hamilton
Advanced Connection Technology Inc. v. Hewlett-Packard Co.	4-12-cv-06487 (CAND)	12/10/2013	Stipulated/Agreed	Granted	Phyllis J. Hamilton
Advanced Connection Technology Inc. v. Toshiba America Information Systems, Inc.	4-12-cv-06489 (CAND)	11/27/2013	Motion by Party	Granted	Phyllis J. Hamilton
SAP America, Inc. v. Pi-net International, Inc.	4-13-cv-01248 (CAND)	10/15/2013	Stipulated/Agreed	Granted	Phyllis J. Hamilton

Case Name	Case No	Date	Cause	Ruling	Judge
e-Watch, Inc. v. FLIR Systems, Inc.	4-13-cv-00638 (TXSD)	9/27/2013	Motion to Clarify Order Re	N/A	George C. Hanks, Jr.
CTP Innovations, LLC v. Dickinson Press, Inc.	3-13-00601 (TNMD)	8/13/2013	Stipulated/Agreed	Granted	William J. Haynes, Jr.
CTP Innovations, LLC v. MPI Label Systems	3-13-cv-00583 (TNMD)	8/8/2013	Stipulated/Agreed	Granted	William J. Haynes, Jr.
CTP Innovations, LLC v. Textile Printing Co.	3-13-cv-00584 (TNMD)	8/8/2013	Stipulated/Agreed	Granted	William J. Haynes, Jr.
CTP Innovations, LCC v. Jet Printing, LCC	3-13-cv-00585 (TNMD)	8/9/2013	Stipulated/Agreed	Granted	William J. Haynes, Jr.
CTP Innovations, LCC v. Walsworth Publishing Co.	3-13-cv-00586 (TNMD)	8/8/2013	Stipulated/Agreed	Granted	William J. Haynes, Jr.
US Nutraceuticals, LLC v. Cyanotech Corp.	5-12-cv-00366 (FLMD)	3/10/2014	Objection to Order of Magistrate Judge Re	N/A	Wm. Terrell Hodges
US Nutraceuticals, LLC v. Cyanotech Corp.	5-12-cv-00366 (FLMD)	3/10/2014	Motion by Party	Denied	Wm. Terrell Hodges
US Nutraceuticals, LLC v. Cyanotech Corp.	5-12-cv-00366 (FLMD)	11/15/2013	Objection to Order of Magistrate Judge Re	N/A	Wm. Terrell Hodges
US Nutraceuticals, LLC v. Cyanotech Corp.	5-12-cv-00366 (FLMD)	11/15/2013	Motion by Party	N/A	Wm. Terrell Hodges
Whalen Furniture Manufacturing, Inc. v. Z-Line Designs, Inc.	3-11-cv-02958 (CASD)	7/12/2013	Motion by Party	Denied	Marilyn L. Huff
CSP Technologies, Inc. v. Clariant Produkte Deutschland GmbH	4-13-cv-00142 (INSD)	3/6/2014	Motion by Party	Denied	William G. Hussmann, Jr.
Ariosa Diagnostics, Inc. v. Sequenom, Inc.	3-11-cv-06391 (CAND)	6/11/2013	Motion by Party	Denied	Susan Illston
Verinata Health, Inc. v. Ariosa Diagnostics, Inc.	3-12-cv-05501 (CAND)	1/13/2014	Motion by Party	Denied	Susan Illston
Evolutionary Intelligence, LLC v. Facebook, Inc.	3-13-cv-04202 (CAND)	1/23/2014	Motion by Party	Granted	Susan Illston

Case Name	Case No	Date	Cause	Ruling	Judge
Norred v. Medtronic, Inc.	2-13-cv-02061 (KSD)	2/12/2014	Motion by Party	Granted	Teresa J. James
Acorne Enterprises, LLC v. Euro-Pro Operating LLC	3-12-cv-00602 (NVD)	12/4/2013	Stipulated/Agreed	Granted	Robert C. Jones
Altus Partners, LLC v. Globus Medical, Inc.	2-13-cv-00822 (PAED)	3/4/2014	Stipulated/Agreed	Granted	Robert F. Kelly
Bergstrom, Inc. v. Idle Free Systems, Inc.	3-12-cv-50254 (ILND)	3/21/2013	Motion by Party	Granted	Matthew F. Kennelly
Taylor Publishing Co. v. CTP Innovations LLC	3-13-cv-02222 (TXND)	8/21/2013	Stipulated/Agreed	Granted	Ed Kinkeade
e-Watch, Inc. v. FLIR Systems, Inc.	4-13-cv-00638 (TXSD)	8/8/2013	Motion by Party	Granted	Sim Lake
US Nutraceuticals, LLC v. Cyanotech Corp.	5-12-cv-00366 (FLMD)	1/28/2014	Renewed Motion	N/A	Philip R. Lammens
US Nutraceuticals, LLC v. Cyanotech Corp.	5-12-cv-00366 (FLMD)	10/15/2013	Motion by Party	N/A	Philip R. Lammens
Sliver State Intellectual Technologies, Inc. v. FourSquare Labs, Inc.	2-12-cv-01308 (NVD)	12/11/2013	Stipulated/Agreed	Granted	Peggy A. Leen
Clearlamp, LLC v. LKQ Corp.	1-12-cv-02533 (ILND)	4/17/2013	Stipulated/Agreed	Granted	Joan Lefkow
Clearlamp, LLC v. LKQ Corp.	1-12-cv-02533 (ILND)	10/18/2012	Motion by Party	N/A	Joan Lefkow
Fellowes, Inc. v. Acco Brands Corp.	1-10-cv-07587 (ILND)	11/7/2013	Stipulated/Agreed	Granted	Harry D. Leinenweber
OpinionLab, Inc. v. Qualtrics Labs, Inc.	1-13-cv-01574 (ILND)	2/18/2014	Motion by Party	Denied	Harry D. Leinenweber
Merck & CIE v. Macoven	6-12-cv-00027 (TXED)	7/3/2013	Stipulated/Agreed	Granted	John D. Love
Unifi Scientific Batteries, LLC v. Sony Mobile Communications	6-12-cv-00224 (TXED)	1/14/2014	Motion by Party	Denied	John D. Love

Case Name	Case No	Date	Cause	Ruling	Judge
American Vehicular Sciences LLC v. Toyota Motor Corp.	6-12-cv-00404 (TXED)	2/19/2014	Motion by Party	Granted	John D. Love
American Vehicular Sciences LLC v. Toyota Motor Corp.	6-12-cv-00404 (TXED)	1/8/2014	Motion by Party	N/A	John D. Love
American Vehicular Sciences LLC v. Toyota Motor Corp.	6-12-cv-00404 (TXED)	11/21/2013	Motion by Party	N/A	John D. Love
e-Watch, Inc. v. Mobotix Corp.	5-12-cv-00492 (TXWD)	5/21/2013	Motion by Party	N/A	Pamela A. Mathy
e-Watch, Inc. v. ACTi Corp.	5-12-cv-00695 (TXWD)	8/9/2013	Motion by Party	N/A	Pamela A. Mathy
Sunless, Inc. v. Heartland Tanning, Inc.	4-13-cv-01066 (MOWD)	3/4/2014	Motion by Party	Granted	John T. Maughmer
Cutsforth, Inc. v. LEMM Liquidating Co.	0-12-cv-01200 (MND)	6/6/2013	Motion by Party	Granted	Janie S. Mayeron
Cutsforth, Inc. v. LEMM Liquidating Co.	0-12-cv-01200 (MND)	6/5/2013	Motion by Party	N/A	Janie S. Mayeron
CTP Innovations, LLC v. Edwards Brothers, Inc.	1-13-cv-01183 (TNWD)	8/12/2013	Stipulated/Agreed	Granted	Jon Phipps McCalla
B E Technology, LLC v. Amazon Digital Services, Inc.	2-12-cv-02767 (TNWD)	12/6/2013	Motion by Party	Granted	Jon Phipps McCalla
One StockDuq Holdings, LCC v. Becton, Dickinson and Co.	2-12-cv-03037 (TNWD)	11/12/2013	Renewed Motion	Granted	Jon Phipps McCalla
One StockDuq Holdings, LCC v. Becton, Dickinson and Co.	2-12-cv-03037 (TNWD)	5/6/2013	Motion by Party	N/A	Jon Phipps McCalla
AngleFix Technology, LLC v. Smith & Nephew, Inc.	2-13-cv-02281 (TNWD)	12/27/2013	Motion by Party	Denied	Jon Phipps McCalla
CTP Innovations, LCC v. Magna IV Color Imaging, Inc.	2-13-cv-02422 (TNWD)	8/9/2013	Stipulated/Agreed	Granted	Jon Phipps McCalla
Endotach LLC v. Cook Medical Incorporated	1-13-cv-01135 (INSD)	3/5/2014	Motion to Modify Order Re	N/A	Larry J. McKinney

Case Name	Case No	Date	Cause	Ruling	Judge
Endotach LLC v. Cook Medical Incorporated	1-13-cv-01135 (INSD)	3/5/2014	Motion by Party	Denied	Larry J. McKinney
Endotach LLC v. Cook Medical Incorporated	1-13-cv-01135 (INSD)	3/5/2014	Motion to Reconsider	N/A	Larry J. McKinney
Endotach LLC v. Cook Medical Incorporated	1-13-cv-01135 (INSD)	1/28/2014	Motion by Party	N/A	Larry J. McKinney
Capriola Corp. v. Larose Industries, LLC	8-12-cv-02346 (FLMD)	3/11/2013	Motion by Party	Granted	Steven D. Merryday
e-Watch, Inc. v. Lorex Technology, Inc.	4-12-cv-03314 (TXSD)	9/26/2013	Motion by Party	Granted	Gray H. Miller
Network-1 Security Solutions, Inc. v. Alcatel-Lucent	6-11-cv-00492 (TXED)	12/30/2013	Motion to Modify Order Re	Granted	K. Nicole Mitchell
Schwendimann v. Arkwright Advanced Coating, Inc.	0-11-cv-00820 (MND)	12/26/2013	Motion by Party	Granted	Ann D. Montgomery
Dane Technologies v. Gatekeeper Systems, Inc.	0-12-cv-02730 (MND)	8/20/2013	Motion by Party	Denied	Ann D. Montgomery
Smart Plates, LCC v. Carestream Health, Inc.	2-13-cv-00540 (LAED)	10/2/2013	Stipulated/Agreed	Granted	Susie Morgan
Lippert Components Manufacturing, Inc. v. Al-Ko Kober, LLC	3-13-cv-00697 (INND)	1/16/2014	Motion by Party	Denied	Christopher A Nuechterlein
ICON Health & Fitness v. Johnson Health Tech North America	1-13-cv-00112 (UTD)	10/4/2013	Stipulated/Agreed	Granted	David Nuffer
ResMed Inc. v. Apex Medical Corp.	8-13-cv-00498 (CACD)	10/4/2013	Motion by Party	Granted	Beverly Reid O'Connell
LifeScan Scotland, Ltd. V. Shasta Technologies, LLC	3-11-cv-04494 (CAND)	10/8/2013	Motion by Party	Granted	William H. Orrick
Evolutionary Intelligence, LLC v. LivingSocial, Inc.	3-13-cv-04205 (CAND)	1/17/2014	Motion by Party	Granted	William H. Orrick
Achates Reference Publishing, Inc. v. Symantec Corp.	2-11-cv-00294 (TXED)	5/31/2013	Stipulated/Agreed	Granted	Roy S. Payne

Case Name	Case No	Date	Cause	Ruling	Judge
Achates Reference Publishing, Inc. v. Symantec Corp.	2-11-cv-00294 (TXED)	4/5/2013	Stipulated/Agreed	N/A	Roy S. Payne
Personalized Media Communications, LLC v. Zynga, Inc.	2-12-cv-00068 (TXED)	11/8/2013	Motion by Party	Denied	Roy S. Payne
Light Transformation Technologies LLC v. Lighting Science Group Corp.	2-12-cv-00826 (TXED)	3/28/2014	Motion by Party	Denied	Roy S. Payne
Light Transformation Technologies LLC v. Lighting Science Group Corp.	2-12-cv-00826 (TXED)	3/27/2014	Motion by Party	N/A	Roy S. Payne
CTP Innovations, LLC v. IntegraColor	2-13-cv-000484 (TXED)	10/11/2013	Motion by Party	Granted	Roy S. Payne
Rensselaer Polytechnic Institute v. Apple Inc.	1-13-cv-00633 (NYND)	1/15/2014	Motion by Party	Denied	David E. Peebles
John Mezzalingua Associates, Inc. v. Corning Gilbert, Inc.	5-12-cv-00911 (NYND)	3/13/2014	Motion by Party	Denied	David E. Peebles
John Mezzalingua Associates, Inc. v. Corning Gilbert, Inc.	5-12-cv-00911 (NYND)	7/16/2013	Motion by Party	N/A	David E. Peebles
EveryMD LLC v. Facebook, Inc.	2-12-cv-06208 (CACD)	12/16/2013	Stipulated/Agreed	Granted	Mariana R. Pfaelzer
EveryMD.com LLC v. Google Inc.	2-13-cv-06490 (CACD)	1/15/2014	Stipulated/Agreed	Granted	Mariana R. Pfaelzer
Derma Sciences, Inc. v. Manukamed Ltd.	3-12-cv-03388 (NJD)	7/18/2013	Motion by Party	Denied	Joel A. Pisano
Kowalski v. Hawaii International Seafood, Inc.	1-11-cv-00795 (HID)	6/14/2013	Motion by Party	Denied	Richard L. Puglisi
Prolitec, Inc. v. ScentAir Technologies, Inc.	2-12-cv-00483 (WIED)	5/17/2013	Stipulated/Agreed	Granted	Rudolph T. Randa
Arnouse Digital Devices Corp. v. Motorola Mobility, Inc.	5-11-cv-00155 (VTD)	11/5/2012	Motion by Party	Granted	Christina Reiss
Zillow, Inc. v. Trulia, Inc.	2-12-cv-01549 (WAWD)	10/7/2013	Motion by Party	Granted	James L. Robart

Case Name	Case No	Date	Cause	Ruling	Judge
Nexans, Inc. v. Belden, Inc.	1-12-cv-01491 (DED)	3/12/2014	Motion by Party	Denied	Sue L. Robinson
Nexans, Inc. v. Belden, Inc.	1-12-cv-01491 (DED)	3/12/2014	Review of Magistrate Report Re	N/A	Sue L. Robinson
Wasica Finance GmbH v. Schrader International Inc.	1-13-cv-01353 (DED)	3/11/2014	Stipulated/Agreed	Granted	Sue L. Robinson
Western Falcon, Inc. v. Moore Rod & Pipe, LLC	4-13-cv-02963 (TXSD)	2/4/2014	Stipulated/Agreed	Granted	Lee H. Rosenthal
Select Brands, Inc. v. Sensio, Inc.	2-13-cv-02108 (KSD)	9/27/2013	Motion by Party	Granted	Gerald L. Rushfelt
Evolutionary Intelligence, LLC v. Yelp, Inc.	4-13-cv-03587 (CAND)	12/18/2013	Motion by Party	Granted	Donna M. Ryu
Evolutionary Intelligence, LLC v. Yelp, Inc.	4-13-cv-03587 (CAND)	12/18/2013	Motion by Party	N/A	Donna M. Ryu
Overland Storage, Inc. v. BDT AG (Germany)	3-10-cv-01700 (CASD)	2/11/2014	Renewed Motion	Granted	Janis L. Sammartino
Overland Storage, Inc. v. BDT AG (Germany)	3-10-cv-01700 (CASD)	12/10/2013	Motion by Party	N/A	Janis L. Sammartino
Overland Storage, Inc. v. Qualstar Corp.	3-12-cv-01605 (CASD)	1/14/2014	Stipulated/Agreed	Granted	Janis L. Sammartino
Trustees of Boston University v. Everlight Electronics	1-12-cv-11935 (MAD)	7/11/2013	Motion by Party	Denied	F. Dennis Saylor, IV
Trustees of Boston University v. Epistar Corp.	1-12-cv-12326 (MAD)	7/19/2013	Motion by Party	Denied	F. Dennis Saylor, IV
Motio, Inc. v. BSP Software LLC	4-12-cv-00647 (TXED)	3/27/2014	Motion by Party	Other	Richard A. Schell
SSW Holding Co. v. Schott Gemtron Corp.	3-12-cv-00661 (KYWD)	8/21/2013	Motion by Party	Granted	Charles R. Simpson, III
Comcast Cable Communications LLC v. Bear Creek Technologies, Inc.	1-11-cv-00721 (DED)	7/17/2013	Motion by Party	Granted	Gregory M. Sleet

Case Name	Case No	Date	Cause	Ruling	Judge
Trustees of Columbia University in New York v. Illumina, Inc.	1-12-cv-00376 (DED)	4/1/2013	Stipulated/Agreed	Granted	Gregory M. Sleet
HumanEyes Technologies Ltd. v. Sony Electronics, Inc.	1-12-cv-00398 (DED)	12/2/2013	Motion by Party	Granted	Gregory M. Sleet
AIP Acquisition LLC v. Level 3 Communications, LLC	1-12-cv-00617 (DED)	1/9/2014	Motion by Party	Granted	Gregory M. Sleet
AIP Acquisition LLC v. Level 3 Communications, LLC	1-12-cv-00617 (DED)	12/27/2013	Sua Sponte	N/A	Gregory M. Sleet
Schubert v. OSRAM AG	1-12-cv-00923 (DED)	10/31/2013	Stipulated/Agreed	Granted	Gregory M. Sleet
Davol, inc. v. Atrium Medical Corp.	1-12-cv-00958 (DED)	6/17/2013	Motion by Party	Denied	Gregory M. Sleet
Phison Electronics Corp. v. PNY Technologies Inc.	1-12-cv-01478 (DED)	11/6/2013	Stipulated/Agreed	Granted	Gregory M. Sleet
Neste Oil Oyj v. Dynamic Fuels LLC	1-12-cv-01744 (DED)	7/2/2013	Motion by Party	Granted	Gregory M. Sleet
<i>In re</i> : Bear Creek Technologies Inc.'s Patent Litigation	1-12-md-02344 (DED)	8/6/2013	Motion to Modify Order Re	Granted	Gregory M. Sleet
TPK America LLC v. Wintek Corp.	1-13-cv-01221 (DED)	12/26/2013	Stipulated/Agreed	Granted	Gregory M. Sleet
Click-to-Call Technologies LP v. AT&T, Inc.	1-12-cv-00465 (TXWD)	12/5/2013	Motion by Party	Granted	Sam Sparks
Click-to-Call Technologies LP v. Oracle Corp.	1-12-cv-00468 (TXWD)	11/26/2013	Motion by Party	Granted	Sam Sparks
National Oilwell Varco v. Omron Oilfield & Marine, Inc.	1-12-cv-00773 (TXWD)	6/10/2013	Motion by Party	Denied	Sam Sparks
National Oilwell Varco v. Pason Systems USA, Corp.	1-12-cv-01113 (TXWD)	6/20/2013	Motion by Party	Denied	Sam Sparks
SoftView LLC v. Apple Inc.	1-10-cv-00389 (DED)	9/4/2013	Motion by Party	Granted	Leonard P. Stark

Case Name	Case No	Date	Cause	Ruling	Judge
General Electric Co. v. Kontera Technologies, Inc.	1-12-cv-00525 (DED)	12/4/2013	Motion by Party	Granted	Leonard P. Stark
General Electric Co. v. Vibrant Media, Inc.	1-12-cv-00526 (DED)	12/4/2013	Renewed Motion	Granted	Leonard P. Stark
General Electric Co. v. Vibrant Media, Inc.	1-12-cv-00526 (DED)	5/3/2013	Motion by Party	N/A	Leonard P. Stark
ZOLL Medical Corp. v. Respirationics Inc.	1-12-cv-01778 (DED)	12/16/2013	Motion by Party	Granted	Leonard P. Stark
Clouding IP LLC v. SAP AG	1-13-cv-01456 (DED)	1/21/2014	Motion by Party	Denied	Leonard P. Stark
Semiconductor Energy Laboratory Co. v. Chimei Innolux Corp.	8-12-cv-00021 (CACD)	12/19/2012	Motion by Party	Granted	Josephine L. Staton
AutoAlert, Inc. v. Dominion Dealer Solutions, LLC	8-12-cv-01661 (CACD)	5/22/2013	Motion by Party	Granted	Josephine L. Staton
TruePosition, Inc. v. Polaris Wireless, Inc.	1-12-cv-00646 (DED)	10/21/2013	Motion by Party	N/A	Mary Pat Thyng
Grobler v. Sony Computer Entertainment America LLC	3-12-cv-01526 (CAND)	7/29/2013	Motion by Party	Granted	Jon S. Tigar
Grobler v. Sony Computer Entertainment America LLC	3-12-cv-01526 (CAND)	6/6/2013	Motion by Party	N/A	Jon S. Tigar
Grobler v. Apple Inc.	3-12-cv-01534 (CAND)	7/29/2013	Motion by Party	Granted	Jon S. Tigar
Grobler v. Apple Inc.	3-12-cv-01534 (CAND)	6/6/2013	Motion by Party	N/A	Jon S. Tigar
Droplets, Inc. v. Amazon.com, Inc.	3-12-cv-03733 (CAND)	9/13/2013	Motion by Party	Granted	Jon S. Tigar
TPK Touch Solutions, Inc. v. Wintek Electro-Optics Corp.	3-13-cv-02218 (CAND)	11/13/2013	Motion by Party	Denied	Jon S. Tigar
TPK Touch Solutions, Inc. v. Wintek Electro-Optics Corp.	3-13-cv-02218 (CAND)	10/31/2013	Motion by Party	N/A	Jon S. Tigar

Case Name	Case No	Date	Cause	Ruling	Judge
Coprecitec, S.L. v. Brinkmann Corp.	1-13-cv-01781 (GAND)	7/19/2013	Stipulated/Agreed	Granted	Amy Totenberg
CTP Innovations, LCC v. Ambrose Printing Co.	3-13-cv-00581 (TNMD)	8/12/2013	Stipulated/Agreed	Granted	Altea A. Trauger
CTP Innovations, LCC v. Ambrose Printing Co.	3-13-cv-00581 (TNMD)	8/12/2013	Stipulated/Agreed	N/A	Altea A. Trauger
Hunter Douglas, Inc. v. Nien Made Enterprise Co.	1-13-cv-01412 (COD)	1/14/2014	Motion by Party	Denied	Michael J. Watanabe
THX Ltd. v. Apple, Inc.	3-13-cv-01161 (CAND)	10/24/2013	Stipulated/Agreed	Granted	Jeffrey S. White
Riverbed Technology, Inc. v. Silver Peak Systems, Inc.	3-13-cv-02980 (CAND)	3/14/2014	Motion by Party	Granted	Jeffrey S. White
Evolutionary Intelligence, LLC v. Twitter, Inc.	3-13-cv-04207 (CAND)	2/25/2014	Motion by Party	Granted	Jeffrey S. White
Software Rights Archive, LLC v. Facebook, Inc.	5-12-cv-03970 (CAND)	9/17/2013	Motion by Party	Granted	Ronald M. Whyte
Evolutionary Intelligence v. Sprint Nextel Corp.	5-13-cv-04513 (CAND)	2/28/2014	Motion by Party	Granted	Ronald M. Whyte
SurfCast, Inc. v. Microsoft Corp.	2-12-cv-00333 (MED)	3/14/2014	Motion by Party	Denied	John A. Woodcock, Jr.
SHFL Entertainment, Inc. v. Boss Media AB	2-13-cv-00796 (CACD)	11/19/2013	Stipulated/Agreed	Denied	Otis D. Wright, II
Arkema Inc. v. Honeywell International, Inc.	2-10-cv-02886 (PAED)	9/25/2013	Motion by Party	Granted	William H. Yohn, Jr.
Bose Corp. v. SDI Technologies, Inc.	1-13-cv-10277 (TXWD)	6/13/2013	Motion by Party	Denied	William G. Young

Appendix II. Summary of Cause of Motions to Stay Pending IPRs

Cause of Motion	Denied	Granted	Other	Total
Motion by Party	40	66	3	109
Motion to Clarify Order Re	1	1		2

Motion to Modify Order Re		2		2
Motion to Reconsider	1			1
Renewed Motion	1	3	1	5
Review of Magistrate Report Re	1	2		3
Stipulated/Agreed	1	48		49
Sua Sponte		1		1
Total	45	123	4	172

**Appendix III. Summary of Courts and Judges for Motions to Stay Pending
Inter Partes Reviews**

Judge / Court	Denied		Granted		Other	Total	
Northern District of California	3	12.00%	21	84.00%	1	4.00%	25
Jon S. Tigar	1	25.00%	3	75.00%	0.00%		4
Phyllis J. Hamilton		0.00%	4	100.00%	0.00%		4
Jeffrey S. White		0.00%	3	100.00%	0.00%		3
Susan Illston	2	66.67%	1	33.33%	0.00%		3
Paul S. Grewal		0.00%	1	50.00%	1	50.00%	2
Ronald M. Whyte		0.00%	2	100.00%	0.00%		2
William H. Orrick		0.00%	2	100.00%	0.00%		2
Donna M. Ryu		0.00%	1	100.00%	0.00%		1
Edward J. Davila		0.00%	1	100.00%	0.00%		1
Edward M. Chen		0.00%	1	100.00%	0.00%		1
Maxine M. Chesney		0.00%	1	100.00%	0.00%		1
William H. Alsup		0.00%	1	100.00%	0.00%		1
District of Delaware	5	20.83%	19	79.17%	0.00%		24
Gregory M. Sleet	1	10.00%	9	90.00%	0.00%		10
Richard G. Andrews	2	33.33%	4	66.67%	0.00%		6
Leonard P. Stark	1	20.00%	4	80.00%	0.00%		5
Sue L. Robinson	1	50.00%	1	50.00%	0.00%		2
Christopher J. Burke		0.00%	1	100.00%	0.00%		1
Central District of California	5	35.71%	9	64.29%	0.00%		14
Philip S. Gutierrez	2	50.00%	2	50.00%	0.00%		4
Josephine L. Staton		0.00%	2	100.00%	0.00%		2
Mariana R. Pfalzer		0.00%	2	100.00%	0.00%		2
Andrew J. Guilford	1	100.00%		0.00%	0.00%		1
Beverly Reid O'Connell		0.00%	1	100.00%	0.00%		1

Cormac J. Carney	1	100.00%		0.00%	0.00%	1
David O. Carter		0.00%	1	100.00%	0.00%	1
Jesus G. Bernal		0.00%	1	100.00%	0.00%	1
Otis D. Wright, II	1	100.00%		0.00%	0.00%	1
Eastern District of Texas	4	36.36%	6	54.55%	1	9.09%
Roy S. Payne	2	50.00%	2	50.00%	0.00%	4
John D. Love	1	33.33%	2	66.67%	0.00%	3
K. Nicole Mitchell		0.00%	1	100.00%	0.00%	1
Leonard Davis		0.00%	1	100.00%	0.00%	1
Richard A. Schell		0.00%		0.00%	1	100.00%
Rodney Gilstrap	1	100.00%		0.00%	0.00%	1
Northern District of Illinois	2	25.00%	6	75.00%	0.00%	8
Harry D. Leinenweber	1	50.00%	1	50.00%	0.00%	2
Edmond E. Chang		0.00%	1	100.00%	0.00%	1
Jeffrey T. Gilbert		0.00%	1	100.00%	0.00%	1
Joan b. Gottschall		0.00%	1	100.00%	0.00%	1
Joan Lefkow		0.00%	1	100.00%	0.00%	1
Matthew F. Kennelly		0.00%	1	100.00%	0.00%	1
Sharon Johnson Coleman	1	100.00%		0.00%	0.00%	1
Northern District of Georgia		0.00%	8	100.00%	0.00%	8
William S. Duffey, Jr		0.00%	4	100.00%	0.00%	4
Julie E. Carnes		0.00%	2	100.00%	0.00%	2
Amy Totenberg		0.00%	1	100.00%	0.00%	1
Clarence Cooper		0.00%	1	100.00%	0.00%	1
Middle District of Tennessee		0.00%	7	100.00%	0.00%	7
William J. Haynes, Jr.		0.00%	5	100.00%	0.00%	5
Altea A. Trauger		0.00%	1	100.00%	0.00%	1
Todd Campbell		0.00%	1	100.00%	0.00%	1
Western District of Texas	3	42.86%	4	57.14%	0.00%	7
Sam Sparks	2	50.00%	2	50.00%	0.00%	4
Fred Biery		0.00%	2	100.00%	0.00%	2
William G. Young	1	100.00%		0.00%	0.00%	1
Western District of Tennessee	1	20.00%	4	80.00%	0.00%	5
Jon Phipps McCalla	1	20.00%	4	80.00%	0.00%	5

Eastern District of Pennsylvania		0.00%	5	100.00%		0.00%	5
Anita B. Brody		0.00%	1	100.00%		0.00%	1
Jan E. Dubois		0.00%	1	100.00%		0.00%	1
Legrome D. Davis		0.00%	1	100.00%		0.00%	1
Robert F. Kelly		0.00%	1	100.00%		0.00%	1
William H. Yohn, Jr.		0.00%	1	100.00%		0.00%	1
Southern District of California	1	20.00%	3	60.00%	1	20.00%	5
Janis L. Sammartino		0.00%	2	100.00%		0.00%	2
Cathy Ann Bencivengo		0.00%		0.00%	1	100.00%	1
Gonzalo P. Curiel		0.00%	1	100.00%		0.00%	1
Marilyn L. Huff	1	100.00%		0.00%		0.00%	1
Southern District of Texas		0.00%	4	100.00%		0.00%	4
Gray H. Miller		0.00%	1	100.00%		0.00%	1
Lee H. Rosenthal		0.00%	1	100.00%		0.00%	1
Nancy F. Atlas		0.00%	1	100.00%		0.00%	1
Sim Lake		0.00%	1	100.00%		0.00%	1
Eastern District of Wisconsin	1	33.33%	2	66.67%		0.00%	3
Lynn Adelman		0.00%	1	100.00%		0.00%	1
Rudolph T. Randa		0.00%	1	100.00%		0.00%	1
William C. Griesbach	1	100.00%		0.00%		0.00%	1
Middle District of Florida	1	33.33%	2	66.67%		0.00%	3
Roy B. Dalton, Jr.		0.00%	1	100.00%		0.00%	1
Steven D. Merryday		0.00%	1	100.00%		0.00%	1
Wm. Terrell Hodges	1	100.00%		0.00%		0.00%	1
District of Nevada		0.00%	3	100.00%		0.00%	3
Miranda M. Du		0.00%	1	100.00%		0.00%	1
Peggy A. Leen		0.00%	1	100.00%		0.00%	1
Robert C. Jones		0.00%	1	100.00%		0.00%	1
District of Minnesota	1	33.33%	2	66.67%		0.00%	3
Ann D. Montgomery	1	50.00%	1	50.00%		0.00%	2
Janie S. Mayeron		0.00%	1	100.00%		0.00%	1
District of Colorado	1	50.00%	1	50.00%		0.00%	2
Michael J. Watanabe	1	100.00%		0.00%		0.00%	1
Philip A. Brimmer		0.00%	1	100.00%		0.00%	1

Southern District of Ohio	1	50.00%	1	50.00%	0.00%	2
Susan J. Dlott		0.00%	1	100.00%	0.00%	1
Timothy S. Black	1	100.00%		0.00%	0.00%	1
District of Kansas		0.00%	2	100.00%	0.00%	2
				%		
Gerald L. Rushfelt		0.00%	1	100.00%	0.00%	1
Teresa J. James		0.00%	1	100.00%	0.00%	1
District of Massachusetts	2	100.00%		0.00%	0.00%	2
F. Dennis Saylor, IV	2	100.00%		0.00%	0.00%	2
Western District of Pennsylvania	1	50.00%	1	50.00%	0.00%	2
Nora Barry Fischer	1	50.00%	1	50.00%	0.00%	2
Eastern District of Michigan	1	50.00%	1	50.00%	0.00%	2
Avern C. Cohn		0.00%	1	100.00%	0.00%	1
Gershwin A. Drain	1	100.00%		0.00%	0.00%	1
District of South Dakota	2	100.00%		0.00%	0.00%	2
Larry J. McKinney	1	100.00%		0.00%	0.00%	1
William G. Hussmann, Jr.	1	100.00%		0.00%	0.00%	1
Eastern District of Wisconsin	1	50.00%	1	50.00%	0.00%	2
Barbara B. Crabb	1	100.00%		0.00%	0.00%	1
William M. Conley		0.00%	1	100.00%	0.00%	1
Northern District of New York	2	100.00%		0.00%	0.00%	2
David E. Peebles	2	100.00%		0.00%	0.00%	2
Northern District of Ohio		0.00%	2	100.00%	0.00%	2
				%		
Christopher A. Boyko		0.00%	1	100.00%	0.00%	1
John R. Adams		0.00%	1	100.00%	0.00%	1
Western District of Kentucky		0.00%	1	100.00%	0.00%	1
				%		
Charles R. Simpson, III		0.00%	1	100.00%	0.00%	1
Southern District of Florida	1	100.00%		0.00%	0.00%	1
Cecila M. Altonaga	1	100.00%		0.00%	0.00%	1
Northern District of Texas		0.00%	1	100.00%	0.00%	1
				%		
Ed Kinkeade		0.00%	1	100.00%	0.00%	1

Southern District of New York		0.00%	1	100.00%	0.00%	1	
Katherine B. Forrest		0.00%	1	100.00%	0.00%	1	
District of Vermont		0.00%	1	100.00%	0.00%	1	
Christina Reiss		0.00%	1	100.00%	0.00%	1	
Eastern District of Louisiana		0.00%	1	100.00%	0.00%	1	
Susie Morgan		0.00%	1	100.00%	0.00%	1	
Northern District of Indiana	1	100.00%		0.00%	0.00%	1	
Christopher A Nuechterlein	1	100.00%		0.00%	0.00%	1	
Court of Federal Claims		0.00%	1	100.00%	0.00%	1	
Francis M. Allegra		0.00%	1	100.00%	0.00%	1	
District of New Jersey	1	100.00%		0.00%	0.00%	1	
Joel A. Pisano	1	100.00%		0.00%	0.00%	1	
District of Connecticut	1	100.00%		0.00%	0.00%	1	
Alfred V. Covello	1	100.00%		0.00%	0.00%	1	
District of Utah		0.00%	1	100.00%	0.00%	1	
David Nuffer		0.00%	1	100.00%	0.00%	1	
Southern District of Mississippi	1	100.00%		0.00%	0.00%	1	
F. Keith Ball	1	100.00%		0.00%	0.00%	1	
Western District of Washington		0.00%	1	100.00%	0.00%	1	
James L. Robart		0.00%	1	100.00%	0.00%	1	
District of Hawaii	1	100.00%		0.00%	0.00%	1	
Richard L. Puglisi	1	100.00%		0.00%	0.00%	1	
District of Maine	1	100.00%		0.00%	0.00%	1	
John A. Woodcock, Jr.	1	100.00%		0.00%	0.00%	1	
Eastern District of North Carolina		0.00%		0.00%	1	100.00%	1
James C. Dever, III		0.00%		0.00%	1	100.00%	1
Western District of Missouri		0.00%	1	100.00%	0.00%	1	
John T. Maughmer		0.00%	1	100.00%	0.00%	1	
TOTAL	45	26.16%	123	71.51%	4	2.33%	172

